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ABSTRACT

This guide is designed to help teachers provide their students with a basic understanding of the American legal system. It concentrates on the foundation of law, criminal procedures, and the laws and court decisions which protect the rights of the accused and freedom of expression. Included are case studies, simulation activities, role play, field study and interning possibilities, as well as value strategies. The first chapter emphasizes the aims and methods of teaching law. The other chapters deal with different aspects of the unit and are topically arranged to include the following: (1) curriculum objectives; (2) teacher background information; (3) motivating strategies; (4) activities to develop knowledge; (5) student handouts; (6) vocabulary; (7) concluding activities; (8) author references and suggested readings; and (9) audio visual materials. An appendix lists resources available to teachers and includes such materials as a legal glossary, an outline of the judicial system, and excerpts from the constitution relevant to the topics covered. (Author/EB)

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INSTITUTE FOR POLITICAL AND LEGAL EDUCATION

INDIVIDUAL RIGHTS: RIGHTS OF THE ACCUSED/ FREEDOM OF EXPRESSION

A Resource Manual for Teachers

Prepared by

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December 1976¹

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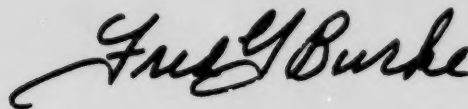
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On behalf of the Department of Education, State of New Jersey, I wish to bring the Institute for Political and Legal Education to the attention of educators throughout the nation. The program has made a significant contribution to the education of high school students about the American political, governmental, and legal process and thus should be of interest to educators, parents, and students.

A handwritten signature in cursive script that reads "Fred G. Burke". The signature is written in dark ink and is positioned above the printed name and title.

Dr. Fred G. Burke
Commissioner of Education
State of New Jersey

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PREFACE

THE IPLE PROGRAM

I. NEED FOR POLITICAL AND LEGAL EDUCATION

A new constituency has been created in America following ratification of the 26th Amendment to the United States Constitution which lowers the voting age to eighteen.

Surveys across the nation of students approaching the age of eighteen have revealed similar and disappointing results. The majority of high school students do not know their local, state, or federal representatives; do not know how to register to vote; do not understand the Bill of Rights; and express disillusionment and frustration with the system.

There is a critical need for an awareness and understanding of the political, governmental, and legal process. The logical approach for correcting the situation is education within the school system.

II. FUNCTION AND METHODS

The function of the Institute for Political and Legal Education (IPLE) is to provide a program to instruct secondary level students in the political, governmental, and legal process. Through the IPLE program, students demonstrate a significant positive increase in their knowledge and reveal an inclination to participate actively in the political process and law-related fields.

A unique feature of the program lies in the view of the total community as a classroom since it attempts to utilize all resources in the community and State as a real and practical base for learning. Students are out of school approximately thirty-five days per school year, involved in field study and interning. Working in the community provides students, through experiential learning, an opportunity to apply the skills acquired in the classroom. This can be accomplished at the local, county, and/or state levels.

Through surveys, problem solving, issue analysis, research, simulations, field study, and interning, students acquire the ability to initiate projects which affect their community in a positive manner.

The key to IPLE's popularity with students, teachers, administrators, and community leaders is its foundation in the real world of political action. Students do not watch an election from the sidelines — they are a part of it! They do not memorize the names of Supreme Court Justices — they actually see the court system in action!

III. CURRICULUM AND ACTIVITIES

The year-long curriculum is subdivided into several areas of concentration, alterable by the interests and selections of the students and teacher. An integrated combination of innovative informational and instructional manuals is utilized within each unit of study, along with simulation games, surveys, projects, audio/visual materials, and relevant interning. In addition, individual classroom, regional, and state-wide training conducted by professional experts provides participants with training in methods for using the curriculum.

The *Voter Education* unit includes the process of issue analysis, canvassing, and registration with insights into media publicity/propaganda techniques, and election strategies. Voting reform, rights and procedures, party structure, and the electoral college are examined intensively. An optional political assembly and simulated election are highlighted with historical review, candidate speakers, and local party campaigning. Activities which are encouraged during the unit include a voter registration drive in and out of school; campaigning for actual candidates (working in campaign headquarters, telephone canvassing, door-to-door canvassing); working as challengers at an election; organizing transportation and/or babysitting for election; and conducting survey polls for election in and out of school.

The *Government: The Decision-Making Process* unit examines the structure and function of the state, county, and local levels related to issues such as environment, housing, and transportation. Included are policy formation, lobbying, media techniques, sociological surveying, and value orientation. Simulation games are used for the purpose of demonstrating to the student the decision-making process of governmental bodies. In addition, students learn the operation of intergovernmental communication and are provided with a practical knowledge of labor-management relations. Student awareness of the passage of laws not only is experienced in out-of-school interning at the State Legislature and/or a professional lobbyist's office but also is simulated at a three-day Model Congress.

The *Individual Rights: Rights of the Accused/Freedom of Expression* unit concentrates on the foundation of law, criminal procedures and the laws and court decisions which protect the rights of the accused and the freedom of expression. Case studies are presented in which students analyze historical court decisions. Students are encouraged to formulate their own law, evaluate its precision, jurisdiction, limits of enforcement, and possible alternatives. Included are simulation activities, role play, field study and interning possibilities, as well as value strategies.

The *Individual Rights: Fair Trial vs. Free Press* unit is similar in format, activities and methods suggested in *Rights of the Accused/Freedom of Expression*. This unit concentrates on those cases which dramatize the difficulty of reconciling two basic constitutionally guaranteed rights: a fair trial and a free press.

IV. DEVELOPMENT AND VALIDATION

The Institute for Political and Legal Education was developed through the cooperative efforts of the Institute staff, educators in local New Jersey districts, and the staff of the Office of Program Development, Division of Research, Planning, and Evaluation/Field Services, the Department of Education, State of New Jersey. The political and legal materials were developed between 1971 and 1974 with funding from the Elementary and Secondary Education Act, Title III.

In 1974 the political education program was validated as successful, cost-effective, and exportable by the standards and guidelines of the United States Office of Education. As a result, the program is now funded through ESEA, Title III, as a demonstration site to provide dissemination materials and services to interested educators.

CHAPTER ONE

TEACHING ABOUT THE LAW



LAW

What a subject is this in which we are united — this abstraction called the Law, wherein, as in a magic mirror, we see reflected, not only our own lives, but the lives of all men...disclosing every painful step and every world-shaking contest by which mankind has worked and fought its way from savage isolation to organic social life.

— Mr. Justice Holmes

If we desire respect for the law, we must first make the law respectable.

— Louis D. Brandeis

It is the spirit and not the law that keeps justice alive.

— Earl Warren

A law is valuable not because it is law, but because there is right in it.

— Henry Ward Beecher

CHAPTER ONE

INTRODUCTION

A group of students somewhere in the Midwest, I believe, did a sidewalk survey for a government course a few years ago and found that many people not only did not recognize the Bill of Rights, but, without the benefit of its title, described it as "communist propaganda." A government which takes pride in being based on laws, not men, is in serious trouble when that kind of public ignorance exists.¹

This statement dramatizes the need for law-related education in our schools. In our society, young people cannot become really effective citizens without at least a basic understanding of the American legal system. The IPLE Program fulfills the critical need for political and legal curricula for youth and offers a carefully integrated approach for development in students on various levels.

Legal and political education has cognitive, affective, and interpersonal dimensions. On the cognitive level, students not only learn facts and theories about the legal system, but also develop critical thinking skills that will stay with them throughout their lives. The activities and methods in the IPLE curriculum sharpen analytical and evaluative skills. Students' perspectives broaden as various strategies lead them to question traditional myths and biases. Their verbal skills, both written and oral improve as they are encouraged to question, record, research, act out, debate, and interact with classmates through the various activities.

On the affective level, the IPLE curriculum develops students' capacity to express their attitudes and values and to make moral judgments. Through a variety of strategies students are encouraged to articulate their feelings about legal and political issues and to clarify their values. These two steps, awareness and analysis of values, are the preliminary steps toward ethical behavior, an implicit goal of any educational system.²

Interpersonal skills and relations with others develop since the methods stimulate students to relate to other students, teachers, and members of the community. The activities motivate students to participate both in class and in the community which becomes an exciting educational resource.

The experiential kinds of activities such as role-play, simulations, interviews with practitioners, field trips, interning, etc., lead students to actual participation in the legal system because they go beyond theoretical knowledge.

This kind of active response benefits not only students and teachers who can become partners rather than adversaries in the education system, but it has advantageous side effects for all of us in society. So many young people are uninformed, uninvolved in the political and legal system and alienated from the mainstream of our society. While adolescent rebellion is a normal phase toward adult independence, the energy

¹From a speech by John C. Pittinger, Secretary of Education, Commonwealth of Pennsylvania.

²See, for example, Sidney Simon, Leland Howe and Howard Kirschenbaum, *Clarifying Values: A Handbook of Practical Studies* (New York: Hart, 1972), and Jack Frankel, *Helping Students Think and Value: Strategies for Teaching the Social Studies* (Englewood Cliffs, N.J.: Prentice-Hall, 1973).

generated by that rebellion can be used either destructively or constructively. A challenging, honest and imaginative study of our political and legal system involves young people creatively in our society and minimizes the apathy, disillusionment, and even hostility demonstrated toward established institutions. The IPLE curriculum is designed to turn students on to active citizenship.

BROAD CURRICULUM OBJECTIVES

1. To introduce the concept and emphasize the importance of legal education in schools.
2. To provide a basic foundation for the study of our legal system and other law-related issues.
3. To develop students' understanding of the need for judicial protection of fundamental freedoms and individual rights.
4. To familiarize students with issues, problems, and laws relevant to the concepts of freedom of expression and rights of the accused.
5. To raise issues of controversy which will develop students' ability to question and investigate unexamined premises and develop their critical thinking.
6. To help students to clarify their opinions on controversial legal issues.
7. To offer methods and strategies which will stimulate positive student involvement in class and in relation to the legal system.

ORGANIZATION OF RESOURCE MANUAL

This guide is designed to bring to the teacher's attention a diversity of materials and methods to achieve the program's goals. Two sections offer information primarily for the teacher: Chapter One emphasizes the aims and methods of teaching law; the Appendix lists resources available to teachers and includes such materials as a legal glossary, an outline of the judicial system, and excerpts from the Constitution relevant to the topics covered.

The other chapters are topically arranged to include the following:

1. CURRICULUM OBJECTIVES

2. TEACHER BACKGROUND INFORMATION

Resource material to assist the teacher's understanding of the legal issues involved.

3. MOTIVATING STRATEGIES

Questions or values strategies to stimulate student interest in the topic, to introduce the issues and to define some of the problems to be studied.

4. ACTIVITIES TO DEVELOP KNOWLEDGE

Case studies, simulations, role-play, polling, value strategies, and optional activities for students with unusual interest or ability.

5. STUDENT HANDOUTS

To facilitate the implementation of various activities. They may be purchased separately as a classroom set from IPLE.

6. VOCABULARY

Terminology is important in each chapter to assist the teacher in both planning and testing. (All the words are included in the legal Glossary in the Appendix).

7. CONCLUDING ACTIVITIES

Questions or other strategies to summarize the major issues of each chapter and enable students to make their own conclusions and possible solutions for various legal dilemmas. These activities can also assist the teacher in testing students' grasp of the topic.

8. AUTHOR REFERENCES/SUGGESTED READINGS

Sources to assist the teacher in personal research.

9. AUDIO-VISUAL MATERIALS

To supplement other activities.

SUGGESTED TEACHING METHODS

A. THE INQUIRY METHOD

1. Objectives

In the IPLE inquiry-oriented curriculum approach, students learn to define problems, formulate questions, classify information, draw inferences and identify alternatives. These activities develop analytical skills which they will be able to apply in a variety of new situations.

2. Classroom Atmosphere and Value Clarification

The prerequisite for the success of the inquiry method is an anxiety-free classroom atmosphere in which students feel free to express their points of view. Teachers need to be non-judgmental and to refrain from imposing their values on students. They should facilitate but not dominate discussion. Teachers ought, instead, to encourage students to place themselves in the situations being studied, so that they become aware of their attitudes and clarify their values.

3. Directed Discussion

Since law involves an effort to achieve some measure of justice by balancing competing interests, the purpose of the inquiry process is to explore fully the options open to the individual and to society in an attempt to balance liberty and fairness with order. In studying legal issues such as those involved in individual rights, there are often no "right" answers, and strong cases can sometimes be made for opposing sides of a particular issue. Therefore, class discussions should *not* be the search for one acceptable answer but an effort to have students learn to express and justify various points of view and to consider the consequences of several options. Students' opinions should be challenged and questioned in order to clarify the issues without judging the student. The activities in the IPLE curriculum are designed to facilitate the process of inquiry for both teachers and students.

B. CASE STUDIES

One technique for inquiry is the case method. By using case studies, whether real or hypothetical, students can analyze conflicting points of view. A case which is chosen to present unsettled legal questions can be a very successful classroom approach. After discussion, students should be allowed to feel free to leave the class with differing opinions on the issues of the case and/or the decision which the court may have rendered. In fact, this disagreement can be the motivation for the introduction of additional resource material for background or an outside speaker who can provide new data on the subject.

The first step in analyzing a legal case is to 'brief' it, to organize the factual circumstances and points of law.

Law students utilizing the case study method often use the following outline:

1. Case title. This should include the citation to the law book in which the case is to be found.

2. Facts. These may be separated into two categories:

- (a) uncontroverted facts, or those not subject to challenge or dispute; and
- (b) implied or inferred facts, or those which are not explicitly stated but logically follow from the uncontroverted facts. Students should justify the inferences they have made, which may not be right but at least should be reasonable assumptions.

3. **Issue.** The crux of the case, the legal question to be decided, should be stated as concisely as possible, for clarity's sake.
4. **Arguments.** The reasoning advanced by each side, plaintiff and defendant, in the lawsuit.
5. **Decision.** Who prevailed?
6. **Reasoning.** What reasons do the judges or justices give for their decision?

Besides the more formal case brief, any case which has been adjudicated by a court can be divided into the following elements for study purposes: facts, issues, decision, and opinion(s).

1. Facts:

(a) Presentation

The simplest way to present the facts of a case is to hand out a sheet presenting them. A number of other strategies can be used in presenting the facts. Sometimes the teacher may want to provide the students initially with only the facts, even though a case has been adjudicated, so that students are free to form their own opinions. The court decisions can be handed out later and a discussion held as to why student decisions differ from the court's verdict, if in fact they do.

Before class, the teacher could prepare a tape recording stating the facts of the case, and play it more than once in class to illustrate what really are uncontroverted facts. Did students perhaps hear the tape differently? A variation on this approach would be to use a few students to create a video-tape or role-play depicting the facts. This simulates a real-life situation as student witnesses to the facts must try to report them accurately, with possible conflicting testimony.

(b) Analysis

The teacher ought to emphasize the importance of analyzing the facts of the case. Everything else in the case hinges on an accurate accounting of the facts involved. The teacher can ask his or her students to enumerate the facts according to the following categories:

- (1) Uncontroverted facts — those not subject to challenge or dispute.
- (2) Implied or inferred facts — those which logically follow the uncontroverted facts. Students should justify the inferences or implications they have made; they may not be right but at least they should be reasonable assumptions.
- (3) Missing facts — other things, which need to be known before reaching a decision and were not stated in the case.
- (4) Important facts — as opposed to the irrelevant or inconsequential facts.

2. Issues:

(a) General Discussion

The teacher may wish to ask for the assistance of a good attorney if he or she feels inexperienced in isolating the various issues of a specific case. The teacher ought to be patient in stressing the need to adhere to the stated facts and the principal issue or issues in the case. Students are led not only toward a substantive conclusion — for instance, that *Tinker* (in *Tinker v. Des Moines*) had a right to wear an arm band in school, but also move toward a wider awareness of both the scope and limits of free expression in our legal system and the American judicial process:

(b) **Competing Interests Approach**

Law is a compromise of competing interests which define the issues.

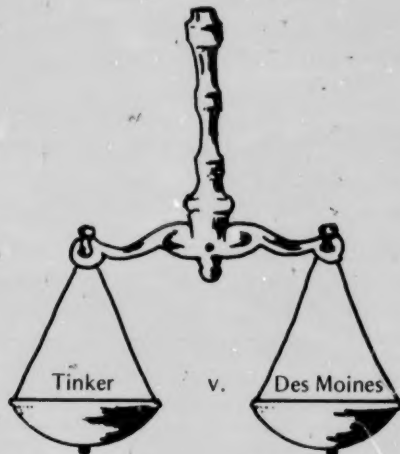
(1) To clarify the issues, ask the following questions:

- (a) Who are the competing parties in the outcome of a case.
- (b) What is each person's or group's interest (e.g., students, parents, school board, administration, civil liberties groups, community, etc.)?
- (c) How would they like the case resolved? Why?
- (d) How can a decision be reached (if, in fact, that is possible) which takes into account all of these interests?

(2) To depict the balance of conflicting issues in the case, the teacher can also draw a set of scales on the blackboard or an overhead transparency and then visually weigh the arguments for the plaintiff and for the defendant as the students define them.

Example: *Tinker v. Des Moines*

- | | |
|---|------------------------------------|
| 1. symbolic free expression | 1. safe and efficient education |
| 2. precedents (e.g., political buttons) | 2. fear of disruption and violence |
| 3. etc. | 3. etc. |



3. **Decision**

The *decision* in a case is a "yes" or "no" response to the central issue. Decision making is a challenging lesson for students: someone will win and someone will lose. The decision not only affects the individual(s) involved; it also sets a precedent for future similar cases.

4. **Opinion(s)**

The *opinion* must include both the reasoning or justification for the decision *and* an explanation of why the opinion disagrees with or can refute other points of view. This reasoning provides the student with appreciation of precedent and an understanding of various legal concepts. Alert students to the possibilities for varying interpretations of the law by judges. There is value in examining minority

dissenting opinions (if the decision was not unanimous) or *concurring* opinions. Justices often write concurring opinions when they agree with the majority decision but for different reasons and wish to indicate that they might decide differently under other circumstances.

C. VALUE CLARIFICATION STRATEGIES

At various points in the study of each topic, value clarification strategies can be used to foster affective development. In beginning a topic, a values clarification exercise can serve as a motivation exercise that heightens students' interest by stimulating them to consider the upcoming issues. At the end of a unit such strategies are an effective way of summarizing some major points of the unit and concretizing changes in student attitudes.

The same survey or continuum could be given before and after each chapter to stimulate student expression of changes in their viewpoints. Such an analysis of affective development is a good self-evaluation technique for students and provides the teacher with valuable feedback about the effectiveness of the course. Each chapter has suggested value strategies, but teachers can easily modify some of the techniques to any topic. The following are some of the strategies the teacher can adapt:

1. Continuum Exercises

A line is drawn between 2 opposite extremes on a given subject and students are asked to take a position somewhere on the continuum. For example, an opinion statement(s) could be put on the board:

In a democracy there should be *no* limit to freedom of speech.

Strongly Agree	Agree	Not Sure	Disagree	Strongly Disagree
-------------------	-------	-------------	----------	----------------------

Students can express their position on the topic in several ways. They can either write on a piece of paper, or put a mark on the board where the continuum is drawn. The most dramatic way, however, is to have students actually line up across the side of the classroom, carefully determining their position by consulting their classmates in the line. Give students time for discussion with their peers. This activity is also effective in stimulating a particularly quiet group or providing a change of pace if students are restless. If you wish to have a continuing, lively activity, a *series* of such continua on different issues could be done and students could shift positions in the line as their attitudes on several issues vary.

2. Value Surveys

A value survey is a longer exercise, generally written, in which students express their positions on a list of issues and is therefore perhaps more appropriate as a concluding activity. (The "Ray Brown" freedom of expression activity, in Chapter IV, is an example of one way to do such an exercise.)

3. Forced Choice

Forced choice is a variation of a polling exercise in which students are only given two choices — to agree or disagree. This can be done by raising hands, by vocal "aye" or "nay" votes as done in some legislatures. A lively method that is effective in rousing a tired class (or teacher) is to push the chairs

back: designate 2 opposite corners of the room as positive and negative poles; and actually have the students move from one side of the room to another as their expression of their opinion on a series of issues. This approach is also useful as an icebreaker at the beginning of the course when students don't know each other or the teacher very well. Try to give students a chance to talk to their peers in the group about their opinion on the issue as they move from one side of the room to the other. Suggest that they try to identify the people they agree the most and the least with. A follow-up exercise might be to get students who agree to explain to each other why they have taken a particular position; then to have students who disagree (combine half of the "nays" and half of the "ayes") explain the reasons of their disagreement to each other. The expression and analysis of disagreement exercise in small groups would also be a dramatic strategy for concluding study of a topic.

4. Rank Order Exercises

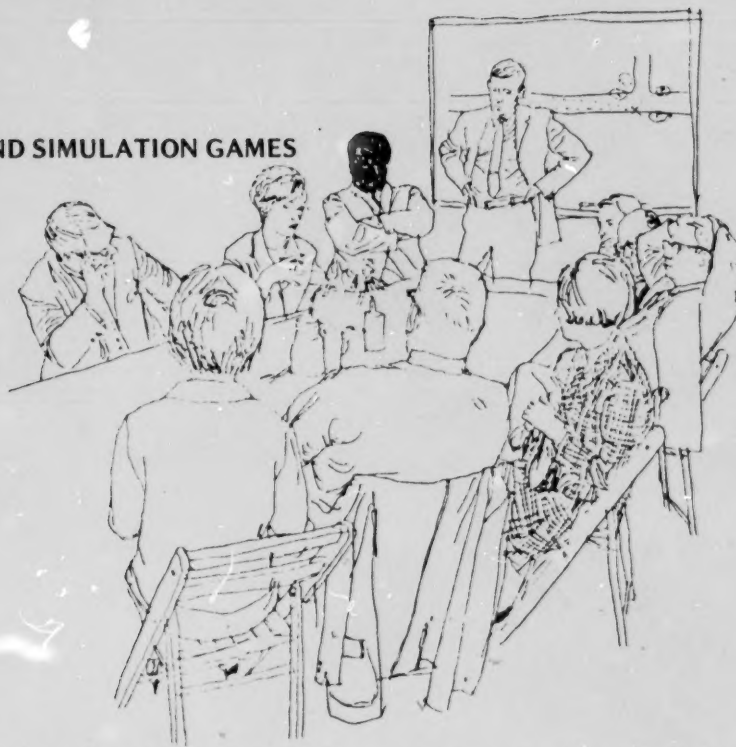
Asking students to rank order their priorities on a group of basic individual rights or rights of the accused is an effective way to get them to clarify their values. An example of one way of doing this exercise is in Chapter III, "How Important Are Our Rights." Such an exercise can clearly be used as motivation for the discussion of a controversial issue. It can also be used as part of a self-evaluation exercise at the end of the course to help the teacher gauge the effectiveness of aspects of the curriculum. Students can be asked to indicate which topics, in descending order, they understood best; or they may be given a list of activities in the course and be asked which they enjoyed the most or which they felt were most effective in developing their understanding of the law.

5. Letters, Cables, Telegrams, Picket Signs, Newspaper or Magazine Ads, Television Commercials, etc.



These methods are projective techniques to get students to verbalize their attitudes and maybe even to encourage activism. You may suggest a list of persons to whom the students may address messages for changing certain conditions related to the rights of the accused or freedom of expression. Students may write hypothetical messages, letters, prepare picket signs, or develop public service television announcements directed to the police, sheriffs, legislators, congressmen, the President, the Supreme Court or a particular Justice, judges, juries, lawyers, the principal, parents, the teacher, etc. The only limits are the teacher's broadmindedness and the students' imagination. Give students enough time to prepare the form and content of the messages — perhaps as a homework assignment — and enough time to read, demonstrate (a TV commercial) or display (picket signs, films, video tapes, collages, pictures for written ads) their messages to the rest of the class. It is up to the teacher's discretion and judgment whether or not the students are encouraged to send their messages. But clearly, since one of the aims of legal education is to foster active citizenship, students who have expressed their dissent in a form appropriate for sending ought to be encouraged to do so. The teacher could profitably ask for follow-ups from those students to help make the class aware of the consequences of such actions and whether or not it can produce any change. The "Exercise in Dissent" in Chapter Four is one example of how this method can be adapted to a specific topic.

D. ROLE-PLAYING AND SIMULATION GAMES



This method develops students' abilities to empathize with individuals with points of view different from their own and lets them experience aspects of the judicial process. It promotes active student involvement in taking the roles of attorneys, probation officers, policemen, judges, or public officials in simulated true-life situations. A full scale simulation requires considerable time and effort on the part of the teacher and/or students so that participants have an adequate understanding of the responsibilities and duties associated with each role.

Simulations can be designed for institutional settings such as a school disciplinary hearing, a juvenile court disposition, or a Supreme Court case. The specific roles involved can be assigned to the students, and a set of procedures followed, with possible time limits for such processes as opening arguments, cross-examination, deliberation, and decision. (Several simulations are included in the following chapters.)

The teacher may wish to participate in role-playing exercises by assuming roles such as chairman of a town meeting, Chief Justice of the Supreme Court, or a juvenile judge in order to insure that proper procedures are followed and to be a model for the role.

Formal Simulations

Two elaborate courtroom simulations are suitable for the classroom. One is the *mock trial* which represents an actual trial based on the facts of a real or hypothetical criminal case. Students play the roles of defendant(s), witnesses, prosecuting and defense attorneys, judge, jurors and so forth. The other is a *moot court* where the concern is the interpretation of the law. It is a simulation of an appeal in which attorneys argue before a panel of judges or before the nine Supreme Court Justices.

The Mock Trial



In role-playing a mock trial, the following roles should be assigned.

1. Judge
2. Court officer or bailiff
3. The prosecutor or plaintiff's counsel
4. The plaintiff or victim
5. The defendant
6. The defense counsel
7. Witnesses
8. Jury
9. Court reporter (You may wish to request that a tape recorder be available for the court reporter to use in recording the proceedings.)

The following procedures for conducting a mock trial have been simplified for use with students.

1. *Opening of the Court.* The court officer or bailiff calls the court to order. "Hear ye, hear ye, the Court is now open and in session. The Honorable Judge presiding. All persons having business before the court come to order. The case of..... Are all persons connected with this case present and prepared? Are your witnesses present? Let the record show that all parties in the case of are present and prepared.
2. *Selection of the Jury.* After the court has been called to order, a jury is selected. (You may wish to include more than 12 students as jury members in order to broaden student participation in the proceeding.)
3. *Opening Statements by Attorneys.* Attorneys for both the prosecution (or plaintiff) and defense make 3-5 minute opening statements to the judge, first the prosecutor or counsel for the plaintiff, then the counsel for the defense. In his opening statement each attorney tells the jury what he intends to prove.
4. *Direct Examination and Cross-Examination of the Victim or Plaintiff and His Witnesses.* The victim or plaintiff is examined first by the prosecutor or his own counsel and then by the counsel for the defense. Each witness is sworn in by the court officer or bailiff as he takes the stand.
5. *Direct Examination and Cross-Examination of the Defendant and His Witnesses.* The defendant is examined first by his own counsel and then by the prosecutor or counsel for the plaintiff. Each witness is sworn in by the court officer as he takes the stand. (You may wish to limit examination and cross-examination of witnesses to thirty minutes.)
6. *Closing Statements by Attorneys.* After the period of examination and cross-examination of witnesses, the prosecutor or counsel for the plaintiff and then the counsel for the defendant give closing arguments, during which time both sides summarize their cases and attempt to convince the jury to make a decision in behalf of their client or position.
7. *Instruction to the Jury.* The judge instructs the jury on the relevant laws and directs them to retire and decide upon a verdict.
8. *Jury Deliberations.* The jurors retire, choose a foreman, and reach a decision or verdict. The jury's decision must be unanimous in most states, and if jurors cannot come to unanimous agreement they are called a "hung jury". In that case, the jury is discharged and a date set for retrial.
9. *The Verdict.* The judge receives the verdict of the jury.
10. *Adjudication.* The judge decides sentence, imposition of fine, disposition of juvenile, or award of custody, power, or money (as applicable in criminal or civil cases).

Moot Court Procedures

1. Each team of attorneys presents their oral arguments, first petitioner (the party who brought the suit to the attention of the Court) and then respondent.
2. During or after each team's arguments, the members of the Court can and should question the attorneys closely so that their arguments may be clarified.
3. After all arguments have been presented and questioning has taken place, the Court Justices form a circle to discuss the arguments. The attorneys are free to sit around the outside and listen, but they cannot interrupt or in any way participate in deliberations. The Chief Justice should preside over the discussions.
4. Each case should be voted on by the Justices, with decisions made by majority vote. The Chief Justice should preside over the voting procedure.
5. The Court should then announce its decision(s) to the attorneys, after which the class may engage in further discussion.
6. If the Moot Court is based on a real court case, the class should conclude by having the students read the actual text of the court decision.

Briefer Role-Plays



Apart from these more elaborate role-playing situations, quickly arranged dramatizations (such as a "stop-and-frisk" procedure on the streets or a confrontation between a student and school librarian over stolen books) can be used to enliven a classroom presentation and to help vividly illustrate the case under consideration. These dramatizations could be used, for instance, to illustrate each of the various steps, (arrest, hearing, jail or bail, arraignment, plea, pre-trial, motions, etc.) in the judicial process as described in Chapter III.

While the enactment of the role-play is, in itself, instructive to students, it is essential for the class to have a "debriefing session" (a critique or post-discussion) after the role-play is over. Students who took part in the role-play could be asked to answer:

1. How did you feel about your specific role?
2. How did your role influence your interaction with others in the court?
3. What were your objectives in your role?
4. How realistic was the outcome?

Other students might respond to these questions based on their perceptions of the simulation. An alternative would be to assign observers whose responsibility it is to evaluate how realistically and credibly the simulation progressed. This discussion should bring out an awareness of the most outstanding considerations of hearings, trials, or simulated situations so that the students do not leave the activity with poorly developed or mistaken conclusions.

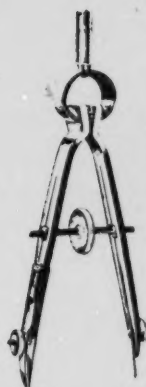
E. VOCABULARY AND TERMINOLOGY

Students should be encouraged to refer frequently to the glossary and vocabulary lists on student hand-outs. Often terms are used by both adults and young people who feel they are familiar with their meanings, but in reality there are important distinctions which need to be stressed such as the differences between or among felony and misdemeanor; larceny, burglary, and robbery; probation and parole; acquittal and dismissal; etc. Black's Law Dictionary or a similar volume is very helpful in drawing such distinctions and defining terms.

One lively way of approaching a review of vocabulary at the end of a chapter or of the course is to set up a game of legal terminology charades. Ask the students to limit the words or phrases to be acted out to legal or political terminology used in the course.

1. Divide the class into 2 or 4 teams of 5-10 students.
2. Each member of each team writes 2 vocabulary words or phrases on separate pieces of paper to be folded and used by the opposing team. The teacher decides the total number of words to be acted out.
3. The teacher should review the rules for charades and the allowable time limits before a team has to forfeit that word and accept the maximum time (3 minutes is a good maximum).
4. Have members of the pairs of teams alternate in attempting to act out the terms. The teacher or a student volunteer can keep time for each team. (Try to use a watch with a second hand.)
5. The winning team is the one which takes the least total time to finish guessing the predetermined number of words.

F. THE LAW AND HUMANITIES: TEAM TEACHING AND OTHER CREATIVE POSSIBILITIES



A good approach for expanding and applying legal concepts or to use a team teaching approach would be to use various examples from film and literature. Either a whole unit could be devoted to the topic or literature, films, short stories, dramas, and books could be integrated in an interdisciplinary approach particularly suited to team teaching situations in which social studies and humanities teachers can work together at least part of the time. The possibilities for such literary enrichment of the curriculum are almost endless, but in the Appendix, certain books, films, etc. that are particularly suited to law-related courses are listed in a separate Law and Literature Bibliography.

Another extension of this approach would be to give students opportunities for various kinds of creative activities to express their opinions, feelings, experiences and imagination on legal or political topics related to the course. A collage is a method easy for even the most unimaginative teacher or student. The class can either be divided into small teams or collages can be an option for the less artistic students. In addition to illustrations, words and letters can be affixed representing various aspects of a particular case or issue. Students with talents in writing poetry or short stories, in art, musical composition, film or drama can be encouraged to use their innate abilities to develop and express their concepts of legal issues.

In schools with video-tape or filming equipment, other teachers can be asked to cooperate in producing a film to be presented perhaps to several classes. Filming a mock-trial or some other simulation is a good technique for both encouraging a high quality of student participation and facilitating evaluation of the activity. One approach which seems to stimulate student creativity is to video-tape or film two versions of the same event such as a form of dissent, demonstration, arrest, interrogation, etc. and have a "jury" determine which follows more closely legal guidelines determined by recent court decisions.

An important follow-up of all these activities is to allow enough time for display or demonstration and discussion both to further understanding of the topic and to give students recognition for their efforts.

G. EXPERIENTIAL AND OTHER STRATEGIES

1. Small Groups

In large classes it is difficult to involve all the students in a discussion without having a few of the more vocal ones dominate the rest. Whenever possible, the class should be broken down into small discussion groups, with a representative from each group designated to report back to the entire class.

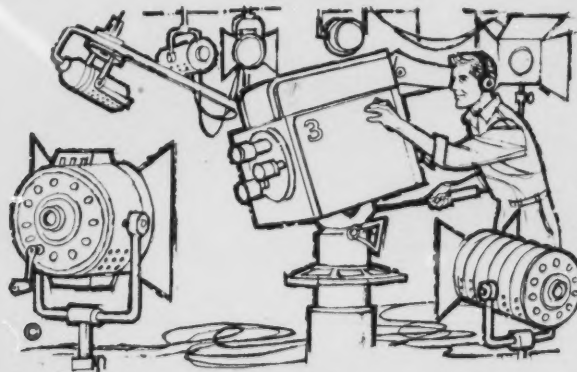
This approach heightens student interest and involvement in the subject matter. The small groups might be given specific tasks to accomplish, such as to develop the prosecuting or defense attorney's arguments in a specific case.

A particularly useful technique in small-group discussions is what is known as *the fishbowl*. As the name implies, some of the students are the "fish" inside while others remain outside the "glass" and look in. The teacher should select a small number of students to sit in the middle of the room to discuss or debate a particular question. The rest of the class arrange themselves around the outside of the small circle as observers and listeners to monitor the discussion (they may even be asked to keep written notes on the course of discussion or participation by individual students within the circle). After a while, the teacher should have the students reverse roles, with the observers becoming participants and vice versa.

2. Peer Teaching

Individuals or small groups can be assigned (or perhaps will volunteer) to do in-depth research on particular subject areas not covered adequately in the core text or manual. They can then be effectively used as peer teachers, sharing their knowledge with other students. They might even wish to prepare a one or two-paged ditto master summarizing their findings or statistical data which can then be duplicated and handed out to the rest of the class for reference. The peer teaching approach is particularly useful when small student "task forces" have had the opportunity to interview individuals or have had actual field experiences in community justice agencies, and are ready to report back to the entire group on what they learned.

3. Films



There are many useful filmstrips and films being developed in the area of law-related education which can serve as good springboards for discussion. All films should always be previewed by the teacher before classroom use. It is the usual custom of teachers to show an entire film and then follow it with questions.

However, this is not always the most effective method of use, since questions and issues will come up during the film, especially if it depicts a case study or a sequence of procedures involving criminal law. In previewing the film, determine the particular points (e.g., after the incident has occurred, after the lawyers' arguments, etc.) at which the film can be stopped for discussion of the facts or issues involved when it is being shown to the students. Be certain to order film far enough ahead to be able to schedule it when it will be the most effective.

4. Outside Speakers

Professional personnel can be invited to school to give in-class presentations and conduct question-and-answer sessions, as a change of pace, for amplification on a particular subject, and to provide students direct knowledge of people involved in the judicial process. Such resource people should be carefully selected and their purpose in being there should be precisely defined to avoid later difficulties. Often the students in the class can be helpful in providing the contacts with their own parents or people they know who are police chiefs, social workers, probation officers, etc. Resource persons do not even have to be so-called "V.I.P.'s". An interesting class discussion might arise with a few young people who had spent a month in the county's detention center, or a local merchant talking about his problems with shoplifting. The class's Human and Organizational Resource List (see Chapter Two) should be used.

5. Field Trips

Field trips outside the classroom can be useful, if they are well planned, in integrating the curriculum with the activities of the community, of which the school is a part. Caution should be taken, however, to avoid becoming locked into public relations tours of facilities which do not accurately reflect institutions as they really are. Also, sensitivity is needed to insure that people being observed do not feel that they are exhibits on display. For example, if the teacher arranges for the students to visit a drug rehabilitation center, a juvenile house of detention, or a JINS (Juveniles In Need of Supervision) shelter, every effort should be made to see that students have a chance to talk *with* the young people who are residents there in an informal "rap session." Field trips can also be of the type in which a couple of students make appointments to interview individuals, e.g., Public Defender, District Attorney, etc., or do court watching (sitting in on several sessions of a court in session, whether it is the municipal, county, juvenile or surrogate court).

6. Interning

Any internships set up with various persons in the community in any way involved with the political or legal system are invaluable learning experiences. Among possible sponsors might be lawyers, police, judges, pre-trial diversion units, juvenile or adult detention centers, JINS (Juveniles In Need of Supervision) shelters, group homes, parole boards, probation officers, court administrators, court clerks, people running hot lines for runaways, juveniles, rape, etc.

STUDENT HANDOUT

HOW TO FIND LEGAL CASES

1. The Meaning of a Citation

Any case which has been adjudicated in a court of law is given a title, reference letters, and numbers which is called a citation. It begins with the name of the case (for example, *Brown v. New Jersey*), which should always be underlined or in italics. The first part of the name (in this case "Brown") indicates the plaintiff or appellant — the person who is complaining. This is followed by "v." (which stands for versus or against), and then the defendant or appellee — the person accused or being complained against.

The numbers and abbreviations indicate the reference books and pages on which the cases can be found. The first number is the volume number, followed by the abbreviation for the reference book, and then the page number.

2. Examples of Citations

The following examples can be used as a guide:

1. *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969). The letters "U.S." indicate that this case was decided by the United States Supreme Court, the highest court in the country, and can be found in the *United States Reports*. The numbers indicate that the case is located in Volume 393 of the *U.S. Reports* on page 503 and that it was decided in 1969.
2. *Richards v. Thurston*, 424 F. 2nd 1281 (1st Cir. 1970). This case is found in Volume 424 of the *Federal Reporter, Second Series*, at page 1281. Cases found in the *Federal Reporter* ("Fed.") or *Federal Reporter, 2nd Series* ("F., 2d") were decided by the United States Courts of Appeals, of which there are eleven — one level below the Supreme Court. In this one, the notation within the parenthesis indicates the case was decided by the Court of Appeals for the First Circuit in 1970.
3. *Hammond v. South Carolina State College*, 272 F. Supp. 947 (D.S.C. 1967). The *Federal Supplement* ("F. Supp.") reports, for the most part, cases from the United States District Courts, of which there are one or more in each state. This case, found in Volume 272 of *The Federal Supplement* at page 947, was decided by the U.S. District Court for the District of South Carolina in 1967.
4. *State Board of Education v. Board of Education, Netcong*, 57 N.J. 1972 (1970). Only decisions of the New Jersey State Supreme Court, the state's highest court, are reported in the *New Jersey Reports*. This particular case can be found in Volume 57 of the *Reports* at page 172 and was decided by the State Supreme Court in 1970.

3. Major Sources Regularly Available

In seeking information about a legal topic in which you do not know the citations, two legal encyclopedias can be helpful: *American Jurisprudence* (Am. Jur.) and *Corpus Juris Secundum* (C.J.S.). The second series of *American Jurisprudence* (Am. Jur. 2nd) is the most current. These encyclopedias, organized alphabetically by subject, provide the reader with general information on particular legal issues and are keyed to the major reference books in which the cases can be found.

A more detailed discussion of legal topic can be found in a series called *American Law Reports* (ALR). This work contains selected cases which are followed by an analytical essay. It is, for this reason, an excellent resource for teachers of high school legal education. The ALR and its second and third editions must be used in conjunction with the *ALR Digest* or the *ALR Quick Index*. This series makes it possible to research a legal issue by subject and gives references to pertinent cases.

4. Other Sources

Numerous other reference books can be found not only in law libraries at law schools and in Federal Court Buildings and the State House, but also often in libraries of large universities that have no law school and at county or municipal court houses.



AUTHOR REFERENCES SUGGESTED READINGS

These resources are included in the "Annotated Bibliography" in the Appendix:

American Bar Association Special Committee on Youth Education for Citizenship. *Law-related Education in America: Guidelines for the Future.*

Bill of Rights Newsletter: published semi-annually by the Constitutional Rights Foundation.

Davidson, S.E. (Ed.). *Media: An Annotated Catalogue of Law-related Audio-Visual Materials.*

Davidson, S.E. (Ed.). *Reflections on Law-related Education.*

Frankel, Jack. *Helping Students Think and Value: Strategies for Teaching the Social Studies.*

Gerlach, R.A., and L.W. Lamprecht. *Teaching About the Law.*

Gibson, W. *Lessons in Conflict: Legal Education Materials for Secondary Schools.*

London, Ephraim (Ed.). *The Law in Literature*, and *The Law and Literature.*

Longaker, R.P., and C.N. Quigley (Eds.). *High School Law Program Attorney's Source Book.*

Simon, Sidney, Leland Howe and Howard Kirshenbaum. *Clarifying Values: A Handbook of Practical Studies.*

You may also find the following helpful as reference books throughout the course:

Black, H.C. *Black's Law Dictionary.* West Publishing Co., 1968. (This or any other constitutional law casebooks could be of assistance to you.)

Barrett, E.L., and P.W. Britton (Eds.). *Constitutional Law: Cases and Materials.* Foundation Press, 1965.

Lockhart, William, et al. (Eds.). *The American Constitution: Cases- Comments-Questions.* West Publishing Co., 1970.

CHAPTER TWO

FOUNDATIONS OF LAW



FOUNDATIONS OF LAW

A precedent embalms a principle.

— William Scott

It is revolting to have no better reason for a rule of law than that it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since and the rule simply persists from blind imitation of the past.

— Mr. Justice Holmes

The condition of the world requires morality to be defined and degraded into compulsory law.

— Ulrici

The life of the law has not been logic; it has been experience... The law embodies the story of a nation's development through many centuries...

— Mr. Justice Holmes

INTRODUCTION

This chapter is designed to introduce the student to the concepts of law and individual rights and to motivate them to think about the answers to such questions as: Why do we need laws? Why should all citizens have a basic understanding of our legal system? Why is it essential that individual rights be protected?

A major goal of this unit is to provide a sound foundation for later lessons on law-related issues by having students engage in a number of pertinent activities. Furthermore, students get a sense of the direct relevance of law and the legal system to the daily lives of all members of society. The teacher should expand or exclude some of the proposed activities depending upon the amount of contact the class has had with law-related studies.

CURRICULUM OBJECTIVES

- To provide a foundation for law studies.
- To develop an understanding of the necessity for all members of our society to have a basic knowledge of our legal system.
- To introduce students to basic legal terminology.
- To introduce students to the topic of individual rights.
- To develop students' understanding of the necessity for judicial protection of fundamental freedoms and individual rights.
- To develop students' understanding of the role of judicial precedence in our legal system.

MOTIVATING ACTIVITIES

STRATEGIES

A possible introduction to motivate students is to have them complete the following sentence(s) either orally or in a written statement:

There ought to be a law

Before we study law, I already know that

DISCUSSION QUESTIONS

1. What purpose does law serve in a society?
2. What are some of the ramifications of a lawless society upon its inhabitants? As you answer, consider the following:
 - a. the Wild West
 - b. vigilantes
 - c. lynchings
3. Do laws differ from country to country, from society to society? Why?
4. What do you have to gain from legal education?
5. What factors do lawmakers have to consider when designing laws?
6. What do we mean by the term "individual rights"?
7. What fundamental freedoms are guaranteed by the Constitution?

MOTIVATING ACTIVITY

WHY STUDY LAW?

OBJECTIVES: To introduce students to the study of law.

To have them consider why high school students should know about the legal system.

To have students develop an understanding of the reasons that all members of society ought to have a basic knowledge of the legal system.

ACTIVITY: Some of the following questions may be asked:

1. Why do you think students at all grade levels should be exposed to law-related studies?
2. What purposes can/should legal education serve in our society?
3. In what ways do you think one can benefit from a basic knowledge of our legal system?
4. What aspects of law should be studied by high school students? Why?
5. Through studying law, how do we better equip ourselves if at some point we are accused of a crime, or become a victim of a crime?
6. Are there any similarities between a lawless society and one whose members are ignorant of the laws?

ACTIVITY

HUMAN AND ORGANIZATIONAL RESOURCES

OBJECTIVE: To have students develop a list of the names, addresses, and telephone numbers of key resource people important in legal education who may be contacted for classroom visits, internships, or research.

- ACTIVITY:**
1. Students should develop a resource list as part of a classroom assignment.
 2. Students can be divided into teams to work on parts of the list.
 3. The official State directory may be helpful for this activity.
 4. The Student Handout suggests one way such a list may be organized. The teacher may wish to add other organizations or persons.

STUDENT HANDOUT

HUMAN AND ORGANIZATIONAL RESOURCES

Position or Organization	Name	Address	Telephone
IPLE	Staff	Box 426, Pitman, NJ	609-589-3410
State Bar Association Representative			
Local Police Chief			
Local Juvenile Officer			
Attorney General			
State or Local American Civil Liberties Union			
Public Defender's Office			
Consumer Protection Agency			
Department of Corrections and Parole			
Judges — Juvenile Court			
— Municipal Court			
— Superior Court			
Office of Probation			
Legal Services Office			
Broadcasters Association			
Press Association			
Criminal Justice Commission			
Youth Service Bureau			
Division of Youth and Family Services			
Local TV Station			
Local Newspaper			
Local College Speakers' Bureau			
Parents in law-related work			
Other teachers interested in law			
Others:			

ACTIVITY

KEEP A JOURNAL/SCRAPBOOK

OBJECTIVE: To provide a method for students to collect materials relevant to individual rights.

To encourage them to be aware of the numerous ways in which our lives are affected by the rights which we have been granted by the Constitution.

To enable students to keep a record of various situations, readings, and thoughts pertinent to individual rights, some of which they may want to share with the class.

ACTIVITY: This activity involves students keeping a journal/scrapbook throughout the unit on law. In it they put articles, reports of relevant events or stories, personal opinions and experiences, a copy of the Constitution for reference, a list of any new vocabulary words, essays or other assignments, and so forth. Students should be encouraged to put anything in their journal which they feel relates in any way to legal education and the more specific topic "Individual Rights." Students should record any experiences with lawyers, judges, police, lawbreakers or any person associated with the legal or political system.

Towards the end of the class unit on law, the teacher may want to develop a number of activities centering around the journal/scrapbook. Students could be asked, for instance, to describe how, if at all, their values have changed since the beginning of the legal education unit. Or the teacher may want to make up a list of discussion questions that students can answer with the aid of their journal/scrapbook.

Students should especially be encouraged to collect reports of current events that provide examples of issues and problems being discussed in class.

Among the questions students might consider in their daily records are:

1. Laws I feel strongly about
2. Laws I disagree with
3. Is it ever morally right to break the law? Under which conditions is it moral to do so?
4. Today I changed my mind about

ACTIVITY

EAST AFRICA HYPOTHETICAL¹

OBJECTIVES: To provide students with insight into the different approaches to law.

To introduce students to legal precedence and the case study approach which they will use in later lessons.

To introduce students to questions and issues which they will encounter throughout the course.

ACTIVITY: A. GENERAL OUTLINE

1. The actual case study should be either read or distributed as it appears on the Student Handout.
2. The subsequent three legal opinions demonstrating the approaches to law should be read *after* the activity.
3. Students are to be divided into groups of judging bodies in order to examine the case. They should be asked to devise a rationale for and/or against the man's conviction.
4. The results should be listed through discussion, the different approaches to law should be distinguished. If not all the possible approaches are isolated, students should be asked questions to stimulate their formulation.
5. Students could be asked to compile a case study for the case and the majority or class opinion with the dissent.

B. DETAILED LESSON PLAN

1. Teacher should ask the class: *What is law?* An overhead projector or the black-board may be used to record the responses given by students. They should explain or clarify their opinions. (Judgment on the correctness of their perceptions is not appropriate at this time.)
2. After a period of general, open discussion, the teacher should take the lead by asking questions which will bring the class eventually to some consensus on a definition of law. The discussion could focus on some of the following issues.
 - Is there an element of morality in law?
 - Is there a relationship between morality and self-interest? (How would you handle a situation in which a person comes onto your property to take something which he claims as rightfully his?)
 - How do people use law for their own ends, even though the law itself is an attempt to establish morality and justice?
 - Is law the will of the strongest? (Not necessarily.)
 - Would anyone argue that a society (or people living together) could exist without law (whatever form it takes)?
 - Is law rules and regulations generally accepted by society? (Some laws will not hold up to this definition.)

¹ Adapted from a tape recording of an JPLE Workshop, April 2, 1974.

Eventually, class should come to a realization that law is a framework that positively or negatively stabilizes life and relationships among a group of people.

3. Students should be given the Handout to read.
4. Students should record in class (or for homework):
 - a. a list of the facts in the case (as known from Handout)
 - b. the issues involved
 - c. what decision they would reach (assume that students are members of an outside tribunal)
 - d. the opinion, i.e., why the decision turned out to be what it was.

Students should assume only the facts as given. Note that some of the facts may be hearsay and should be stated as such, e.g., "The young man said that ..."

5. After sufficient time, the teacher should go over the points listed above. First, *what are the facts? What happened?* Students' responses should be listed on the board or overhead projector, and then discussed.
 - He killed woman, after creeping into her hut.
 - Two children died.
 - He alleges self-defense.
 - He was convicted at trial level and sentenced to death.
 - He turned himself in.
 - The accused had non-Western background.
 - etc.
6. Students should be guided to distinguish the important facts from the unimportant.
7. Students should consider which facts can be *inferred* as reasonable assumptions. Students should support their responses (he thought woman would kill him).
 - Can it be inferred that there is a tribal belief in witchcraft? (Not usually. It is not given and cannot really be assumed.)
 - Would it make a difference if only he believes in witchcraft as opposed to the whole tribe?
8. The witchcraft question can be used to lead into a discussion of *what facts are not given that need to be known*.

Examples:

 - What did children die of?
 - Did other children die mysteriously during this period?
 - Does the tribe believe in witchcraft?
 - What are the general customs and ways of this tribe?
 - Is there a difference between witchcraft used as a power to heal rather than to kill?
 - Was the woman a witch? If so, what kind?
 - Does the tribe have laws against evil witchcraft?
 - If so, is the young man the proper person to enforce these laws or should he go to the headman first?

9. The discussion should be directed to *issues* involved. The most critical part of any case study is the issues. The decision in a case is based on what the issue(s) are perceived to be. When the students state the issues, they should define and frame them into "Whether or not..." statements.

Examples:

- Whether or not the murder by the man was self-defense ...
- Whether or not a Western court should apply Western standards ...
- Whether or not witchcraft was involved ...

The class may be asked:

- Assume that the man honestly believes in witchcraft: how many students would support his claim of self-defense?
- What is the Western definition of self-defense? (A reasonable person would believe that to do otherwise would lead to imminent physical harm to himself, resulting in death.)
- Is this ridiculous? If a person is in danger of death, can he be expected to act "reasonably?"

10. The teacher may read or hand out the three opinions of the High Court judges.
11. Students should indicate which judge they agree with and why. (Take an informal poll through a show of hands: how many agree with the first judge? the second? the third? Any dissenters or fourth alternatives?)

Note: It can be inferred from the decisions that witchcraft is accepted by the tribe. What did the judges say about the young man's beliefs in witchcraft? (They said the beliefs were sincerely held.)

12. Each judge represents a different approach to law.
- a. The first judge is practicing *Positive Law* (applying the law to the particular case — in this case, what a reasonable Englishman would do).

Note: In the poll of student reaction, usually very few side with the first judge. Ask the students why more did not agree with the first judge, since he was only "doing his job" as we traditionally view the role of a judge, i.e., to apply and interpret the law.

- b. The second judge practices *Sociological Law* (applying or blending custom with law). Many issues in the law are a balance of conflicting interests. This judge says that British law has certain criteria for what constitutes self-defense, but this has to be modified under the circumstances. He even makes political judgments, referring to "neo-colonialism."

Note: Many students will probably side with the second judge. Did the students apply the principle of "what a reasonable man would do" but change the location from Piccadilly to an East African tribe?

- c. The third judge is following what is called *Legal Realism* (accommodating the law to particular circumstances — defining the law according to what he thinks it should be in the situation). Students should consider what the third judge is trying to do in his decision.

- achieve a compromise?
- set a precedent?

13. Students should be asked whether a fourth approach should be included, *Natural law* (a higher law exceeding the written law being applied, such as that recognized in upholding claims of conscientious objectors to military service).

The judges could have said that none of the approaches was satisfactory, thereby taking the case out of the realm of the legal system altogether.

14. Teacher should point out that there are many different approaches to the question and that arguments can be made for each decision. In any case under study, students should investigate what kind of an approach to law is used by the judge. The particular East Africa case is good for several reasons: it is complicated (crime, witchcraft, etc.); it considers the question of what is a "reasonable" defense; it deals with the issue of a clash of cultures (comparing and contrasting laws from different countries and cultures can be very enlightening).

15. In conclusion, students should understand that there are two results of any case in the American legal system which is based on "common law"

- a. guilt or innocence of the individual involved is determined
- b. a precedent is set for future cases of a similar nature.

In "common law" countries like the U.S. or England, every case makes law for society. There is a need to look at a case's effect on the law. Consider: What would be the effects of the various decisions possible in the East Africa case?

In the American system, due process requires that laws be precise and clear, and that guidelines be set regarding enforcement. Otherwise, the law would have no meaning, since people would be unable to determine what they can or cannot do.

STUDENT HANDOUT

LAW AND POLICY IN EAST AFRICA

A young man in a remote village, uneducated in the Western sense, is charged with murdering a relative, an old woman. He admits killing her but says he did so in self-defense: she was a witch, sworn to kill him by incantation.

The story told by the young man is that one of his children came down with an unknown illness, weakened mysteriously, and died. By tribal custom the old woman, his relative, should have prepared the funeral rites, but she did not do so. When he asked her why, she said she had cast a spell on the child and would kill all his family.

Then another child sickened and died. The man confronted the old woman and demanded she stop. She laughed, looked hard at him, and said she would see that he died before sundown that day. He went away, found an axe, crept into the old woman's hut, and killed her. Then he turned himself in to the head man.

The young man was convicted and sentenced to death.

LAW AND POLICY IN EAST AFRICA

The Judges' Opinions

On appeal, three judges of the High Court differed.

The Three Opinions

1. The first judge said he would not question the sincerity of the accused: doubtless he really did believe in witchcraft, and thought he would die unless he killed the old woman first. But a belief in imminent physical danger could be accepted as a defense to murder only if it was reasonable. The law of this new African republic was still based on the common law of England, and that meant the test was what a reasonable man on Piccadilly would believe. No reasonable Englishman believed in witchcraft. The conviction should be affirmed.
2. The second judge said the first was practicing neo-colonialism: a new African state could not be bound in its law by what the mythical reasonable man on Piccadilly believed. Clearly this defendant's belief was reasonable in his culture. Conviction should be reversed.
3. The third said both his judicial colleagues were wrong in their approach. English rules should not be rigidly applied, but it would be just as bad for the new state to accept primitive beliefs as a standard. The court should take a pragmatic approach and decide the case in the way most helpful to the country. That was to uphold the conviction but reduce the sentence to a moderate prison term, thus teaching that belief in witchcraft was not a good defense but allowing time for that principle to become understood.

Developed from
article by Anthony Lewis, "Law and Policy in
East Africa," *New York Times*,
January 3, 1970.

ACTIVITY

WHY DO WE HAVE LAWS? :

CHILDREN'S HAVEN



OBJECTIVES: To have students become involved in an activity which will lead them to consider why we have laws.

To offer students the experience of constructing laws within the context of a hypothetical situation.

To provide the motivation and basic assumptions for an analysis of the form, evolution and rationale for existing laws.

ACTIVITY: Students should read the hypothetical situation in the Student Handout and develop a system of laws that serve the needs of the community.

Once students have completed the assignment, ask them to present examples of laws which they designed. If the class is small, each student could describe the system which he or she has constructed. Critiques of the students' legal systems should include discussions of the following:

1. precision of language used
2. degree of ambiguity open to various interpretations
3. limits and means of enforcement
4. implications and scope of languages
5. alternative means of handling situation
6. consequences of enforcement or non-enforcement
7. acceptability by majority
8. laws which they have created which are in conflict with U.S. laws

STUDENT HANDOUT

CHILDREN'S HAVEN



You are a senior in college and this is graduation day. Four years ago your uncle died childless and left his estate to you. In his will he stipulated that you were not to know how much money he had left you and were not to receive any of it until you were awarded a degree from an accredited university. Much to your surprise, your uncle has left you a hundred million dollars.

Since you are a kind individual, concerned about others less fortunate than you, you decide to buy a huge area of land in an isolated area and set up a haven for poor, parentless children. There, in a small community atmosphere, these children could live and be educated away from the evils, prejudices, and temptations of society. Once you have arranged for the construction of this little "town" and the children who will inhabit it have been chosen, you realize that you are confronted with a problem.

Like any other community, yours will have to have some rules by which its members will live. Your job now is to decide what types of rules or laws are necessary and then to construct a system of laws for your society. As you make this decision, be sure to indicate:

- a) which freedoms and rights (if any) have to be protected and why
- b) what individual responsibilities are necessary and desirable
- c) what rules are necessary and why
- d) what should be done to insure that these rules are not broken
- e) what should be done if someone does break a rule
- f) what laws that govern American people should be left out and why
- g) what new laws you have created and why
- h) do your laws reflect the fact that the people to be governed by them are children?
- i) who will administrate these laws (i.e., other children? adults? no one?)

ACTIVITY

INDIVIDUAL RIGHTS

OBJECTIVE: To introduce students to the topic of individual rights.

To make students aware of the need for judicial protection of fundamental freedoms and basic individual rights guaranteed by the Constitution.

ACTIVITY: 1. On the black board write the following quotation:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, ...

Declaration of Independence

2. Ask students to define, in their own words, the term "unalienable rights."
3. Ask students to list essential rights which they feel should be protected. For each "right" that is placed on this list, ask the students to explain why there is a need to protect this freedom. If students have trouble completing the list, prompt them by giving them examples or other hints.
4. For a long range homework assignment, have students collect headlines from newspapers related to individual rights. Each headline should be labelled to indicate the right involved.

ACTIVITY

JUDICIAL REVIEW

- OBJECTIVE:** To familiarize students with the role that the Constitution assigns to the Supreme Court.
- To introduce students to the concept of judicial review.
- To develop students' understanding of the importance of precedent.

- ACTIVITY:** 1. Assign two students to do a presentation for the class on the Supreme Court and its powers, with particular emphasis on the concept of judicial review. One of the students should give an oral report, providing the foundation for an understanding of the importance of precedent. The other student should be a discussion leader and guide the class in examining the relevant issues of the oral report.

The best resource materials for an assignment of this sort can be found in a high school or public library. A number of books have been written on the high school level to explain the functions of the Supreme Court; works on the American government should also be helpful. A reading list for the students consisting of books that are in the school library can be put together.

2. There are several important issues that should be dealt with as students discuss the role of the Supreme Court:

- the role of the Court in interpreting the Constitution
- what is meant by the term precedent; the importance of precedent in our legal system
- why Supreme Court decisions are so important
- the meaning of several terms:
 - a. affirm
 - b. reverse
 - c. concurring opinion
 - d. dissenting opinion
- how and why laws passed by Congress and state legislatures can be declared unconstitutional by the Supreme Court
- why the power of judicial review is a matter of continuing controversy
- how Supreme Court decisions have increased the flexibility of the Constitution

3. Pass out the Student Handout and have students answer the discussion questions which appear on it. Students may write or orally express their answers.

4. Make sure that students have grasped these major concepts before going on to the next unit.

STUDENT HANDOUT

JUDICIAL REVIEW



*"Wilson? Not the Wilson of U.S. versus Wilson!"*¹

1. What is the message that is being conveyed by the cartoonist?
What does this cartoon have to do with the term "precedent"?
2. What is judicial review? Why has this power of the Supreme Court been a continuing source of controversy?
3. What would happen if the Supreme Court were denied the power of judicial review? As you answer, be sure to consider the effect this would have on the relationship between the legislative and administrative branches of the government.
4. Why is it necessary to have a body that interprets the Constitution?
5. Is it possible for a law to be unconstitutional? If so, how? How is the constitutionality of a newly passed law tested?

¹Drawing by Whitney Darrow, Jr.: © 1974, The New Yorker Magazine, Inc.

OPTIONAL ACTIVITY

A LAWLESS SOCIETY

OBJECTIVE: To have students develop an understanding of the necessity for laws in our society.

To provide an experience through which students will become aware of the pervasiveness of law in our society.

To have students think about the repercussions of a lawless society.

To provide students with an opportunity to approach the topic of the necessity for law in an imaginative way.

ACTIVITY: Directions are explicitly indicated in the Student Handout. Encourage students to think about other areas of law besides criminal justice. For instance:

- a. consumer protection
- b. dispute settlements
- c. food and drug administration
- d. property ownership
- e. motor vehicle control
- f. environmental protection
- g. civil rights
- h. public assistance
- etc.

Once the class has finished the assignments, students may be asked to read their "articles" aloud or to post them on a bulletin board.

STUDENT HANDOUT

Oil Key OPEC Move

by CHARLES T. MAXWELL

The possibility of a sharp rise—10 percent—is the consensus expectation of oil producers and financial circles. The Organization of Petroleum Exporting Countries (OPEC) is being urged by government officials and economists to develop industrial oil prices since indirect countries are being cut off. Few of them have gained over recent years as a whole is a gain of income.

SUNDAY, 1973

NO MORE LAWS

You are an ace reporter for *The New York Times*. Today Congress has decided to abolish all laws in the United States, and you have been assigned to cover the story.

Write an article describing the repercussions of this declaration during the first week of its institution. Your report can be general or can cover a specific aspect of society or our daily affairs that have been affected by this latest act of Congress.

anonymity virtue

By RICHARD T. GRIFFIN

CHICAGO—Bliss in the executive suite is never having a major strike against the company. And making a profit, year after year in good times and bad, selling a competitor's products to your own customers. And being loved by the securities analysts who follow the stock of the company: you founded.

That's W. W. Grainger Inc., listed on the New York Stock Exchange, sporting upwards of \$300 million in annual sales—and generally million in none of the products it makes or sells, and it refuses to sell to just any body.

Grainger is a master distributor of motors and other electrical goods. Its most important customers are distributors. It is the tributor of electric goods in the United States.

It will have been 15 months since the last general price increase. Given that inflation has lessened worldwide, albeit at this price of oil has slipped back relative to the cost of all other goods and services since the October 1972 price rise, some of the non-OPEC countries which together produce two-thirds of the world's oil supplies. It will have been 15 months since the last general price increase. Given that inflation has lessened worldwide, albeit at this price of oil has slipped back relative to the cost of all other goods and services since the October 1972 price rise, some of the non-OPEC countries which together produce two-thirds of the world's oil supplies.

the present conservative dynamism of the position of their economies could be substantially worse. Despite the clash of conflicting views, the Saudis are likely to stick with their promise that they are not prepared to go above a 10 percent increase. Their growing political prestige in the Arab world, particularly after the recent successful mediation of King Khalid in the Lebanese civil war, may help in the swing over one or two of the Arab moderates to their side. In any case, their vote alone would suffice to block any action with which they did not agree.



Jacquelyn Rogan

special corporation service free for ready market while Smok and reduced rates. The American Telegraph Company and the Department of the Treasury have offered to employ a notary.

OPTIONAL ACTIVITY

THE ISLAND SIMULATION

OBJECTIVES: To help students come to an understanding of the concept that rules are needed to regulate relationships among individuals.

To simulate a situation in which students need to construct a society.

ACTIVITY: ASSUMPTIONS:

One person living on an island needs no laws at all. When a second person joins him/her, however, they will probably both find they must make some agreements regulating their behavior. When additional people join them, even more regulations are necessary to make living comfortable for all. Prehistoric humans, in a tribal state, had little need for laws. But as people grew more and more numerous, and bumped into each other more and more, rules were needed to regulate relationships among individuals. Some laws keep us from injuring other people or their property. Others help to settle disputes that arise between individuals or groups.

INSTRUCTIONS:

1. The teacher should distribute the description of the setting which appears on the Student Handout, divide the class into groups of six to eight, and instruct the class to act and react by role-playing as the situation might develop.
2. While the class is role-playing (the teacher should not be concerned if there is no action in the beginning, after a while the room may become quite noisy and chaotic at times!), the teacher should monitor the activity and make written or mental notes of what takes place and what patterns of behavior emerge.
3. At the end of the class, or the following day, there should be a discussion to "de-brief" what happened:
 - Were the islanders at a loss?
 - Did certain rules and guidelines emerge from the group?
 - What was the purpose of the laws? Why were they found to be needed?
 - What patterns of leadership developed? Did the strongest one take over?
4. The teacher should ask whether any students have read William Golding's novel, *Lord of the Flies*. If so, the students should describe some of the patterns which developed among the young boys stranded on the island. They should give particular attention to events which could be compared to the class simulation.

STUDENT HANDOUT



THE ISLAND

You are all on an island. It is three miles long and one mile wide. The highest elevation on the island is 300 feet at the north end. A cave was found within this hill that contains 500 pounds of wheat in an unmarked waterproof container. There is a fresh water spring on the island. The island is somewhere in a warm-water ocean. Thirty percent of the island is covered with vegetation. The island is not on any air or sea navigation chart. No plane or ship passes within sight of the island. Whatever means you had for getting on the island is destroyed. If you were on a ship, the ship has sunk to a depth of three miles in the open sea. The ship had had no contact with any other ship or station. The port authority in the last port from which you departed had no knowledge of your destination or location. If you traveled by air, all contact with air traffic control was lost at least 1,000 miles from your current location. No SOS or May Day call was sent. Your physical condition on the island is exactly as it is at this moment.

OPTIONAL ACTIVITY

"THERE OUGHT TO BE A LAW"

OBJECTIVE: To have students gain an understanding of the law-making process and the difficulties that this process involves (minimization of ambiguity, appeal to the majority, avoiding conflicts with existing laws, etc.), by having them construct laws of their own.

ACTIVITY: "There ought to be a law...." How many times has each of us uttered or thought these words? This phrase has almost become an American folk saying like "You can't fight city hall!" It is used most often by angry citizens upset over some situation, condition, or practice which they feel could be remedied if only there were a law on the books to deal with it. Any new law must start as an idea.

1. Write the phrase "There ought to be a law..." on the chalkboard and then ask the students to complete the sentence by volunteering ideas about their own particular concerns. For example, there ought to be a law....

- banning beverages sold in non-returnable bottles
- requiring a traffic signal at the corner of Main and Church Streets
- lowering the mandatory school attendance age from 16 to 14
- requiring jury trials for juvenile criminal cases
- etc.

2. The teacher should then select several of the suggested subjects for new legislation and divide the class into groups assigned to draft the proposed laws. The student who proposed a particular law should be one of those in the group assigned to write it. Give them 15-30 minutes to do this.

Note: Students should be urged to be as precise as possible in the language they use in writing the laws. The wording should clearly define the law's *rule* (purpose, scope, limits) as well as its *enforcement apparatus*, so that ambiguities and interpretation problems can be minimized. They will probably find it difficult to frame a law that is both general in nature yet not open to a wide variety of interpretations.

3. The lesson should be concluded by having each group read its drafted law to the class, and then discuss strengths and weaknesses of the law as written.

In looking at the proposed law, students should be directed to recognize possible conflicts with existing State or Federal law, infringements on the rights of others, and legislation already dealing with parts of the proposal. This particular aspect can lead to an interesting discussion as well as some research into the above conflict areas. Many times people are not aware that there are particular laws already on the books and it is just a question of possible lack of enforcement.

OPTIONAL ACTIVITY

MIND WALK¹

or

I DIDN'T KNOW THERE WERE SO MANY LAWS

OBJECTIVES: To help students get an idea of the pervasiveness of the law, the way it seems to touch everything we do.

To help students to understand the positive protective nature of law.

ACTIVITY:

1. Describe a typical activity in everyday life or a trip somewhere.
2. Ask the students to interrupt the story whenever a law becomes involved in the situation.

By just beginning, "My name is Laura Peterson; I live at 427 Hillsdale Drive, Frankford, New Jersey; this morning I drove to work at Central High School..." the teacher should already have been interrupted several times by her students to point out that a person has a legal name and a legal residence, and that there are a variety of laws associated with home ownership, employment, automobile driving, and so forth.

The first time through the story, the students may not spot many laws. Their imaginations may be spurred by a few questions: Aren't there laws about the content of gasoline in the tank? Are there laws about the car you drive? Are there laws about wearing clothes and about money used to pay for food and clothing?

3. The class could prepare a mural or collage of the story and illustrate it with symbols reflecting the appropriate laws. Another follow-up activity would be to have students write their own story and illustrate it on poster board. These can then be put up in the room for discussion.
4. The following excerpt from an article by Martin Waldron which appeared in the *New York Times* on March 14, 1976, will give you a good idea of the pervasiveness of the law, as well as an idea for how the game can be played.

Before he has even had breakfast on an average day, a typical new Jerseyan probably has called into play a half-dozen or more state councils, examiners, committees, or study groups. For example, getting a glass of water involves the state's Clean Water Commission, the Water Policy and Supply Board, the Water Resources Division of the Department of Environmental Protection, the Water Supply Needs Commission, and the Well-Drillers Examiners and Advisory Board.

As for the breakfast itself, one consisting of apples, bacon, eggs, and milk touches the Apple Industry Council, the Dairy Industry Division, the Bovine Advisory Board, the Poultry Inspection Section, the Poultry Parts Division, and the Swine Industry Advisory Committee.

¹Based on an article by Frank Ansley in the March, 1973, issue of *Learning* magazine.

OPTIONAL ACTIVITY
THE LAW AROUND US
(MIND-WALK VARIATION)

OBJECTIVES: To help give students an idea of the pervasiveness of the law.

To reinforce the concept of the positive nature of law.

ACTIVITY:

1. The teacher should draw a house on the board, and inside of the house write the word, kitchen.
2. The students should be asked to name major things found in this part of the house.

The list might include:

- a. stove
 - b. sink or plumbing
 - c. electrical light
 - d. refrigerator, etc.
3. Students should be asked if there are any regulations regarding these items. For example, there are laws regarding electrical installation, licensing of the electrician, public utility rates, appliance warranties, etc. Upon investigation of this, you can delve deeper into the various agencies and regulations that have responsibility for each of these items. (As a research project students could investigate individual items to see laws, regulations, licensing and agencies involved in just one item in the home.)
 4. This can be done with other areas of the home as well, using the same type of procedure.
 5. A school building could be used as the next means of exploring the pervasiveness of law. (For example, the Department of Education has regulations regarding the building. Teachers are regulated by a variety of statutes.)

CONCLUDING ACTIVITIES

DISCUSSION QUESTIONS

1. What is meant by the phrase "ignorance of the law is no excuse"? Discuss this phrase in relation to the role of legal education in our society.
2. To what extent do you think legal education should become a permanent part of our public educational system? Why?
3. To what extent does law affect our lives in this society? Do you think that law is as pervasive in all societies as it is in ours? Suggest comparisons with other countries.
4. What purpose does it serve to study the results of cases that have already taken place? Would it be helpful to study cases that have taken place in other countries? Why or why not?
5. Is it possible that different judges take different approaches to law when making decisions? Would this mean that the decisions would also be different? Explain and give examples.
6. Why are our laws not directly applicable to other countries and societies?
7. Would you agree that a major function of law is to provide social stability and, thus, to be oriented toward change? Explain and provide arguments to support your answer.

VOCABULARY REVIEWS

- ACTIVITIES:**
1. The legal terminology charade suggested in Chapter One could be used as a vocabulary review.
 2. Vocabulary list could be used as a basis for a test.

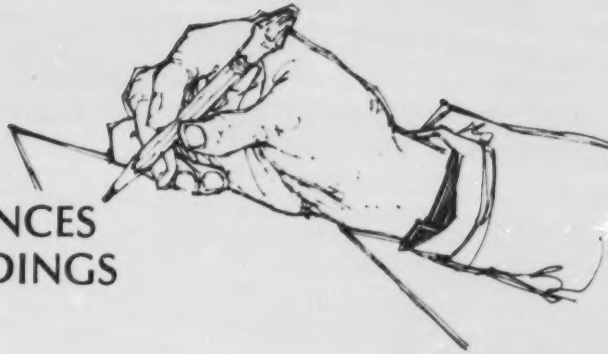
STUDENT HANDOUT

VOCABULARY

Other pertinent terms may be added to this list.

adjudicate
affirm (with respect to court decisions)
Bill of Rights
concurring opinion
dissenting opinion
judicial review
precedent
reverse (with respect to court decisions)

AUTHOR REFERENCES SUGGESTED READINGS



These resources are included in the "Annotated Bibliography" in the Appendix.

American Bar Association. *Law and the Courts.*

Bragdon. *Pursuit of Justice: An Introduction to Constitutional Rights.*

Golding. *Lord of the Flies.*

Goodykoontz. *Law: You, the Police, and Justice.*

Johnson. *The Supreme Court.*

Kafka. *The Trial.*

Kelman. *The Supreme Court: Judicial Power and Social Change.*

Longaker & Quigley. *High School Law Program Attorney's Source Book.*

Orwell. *1984.*

Starr. *The American Judicial System.*

Summers. *The American Legal System.*

AUDIO/VISUAL MATERIALS

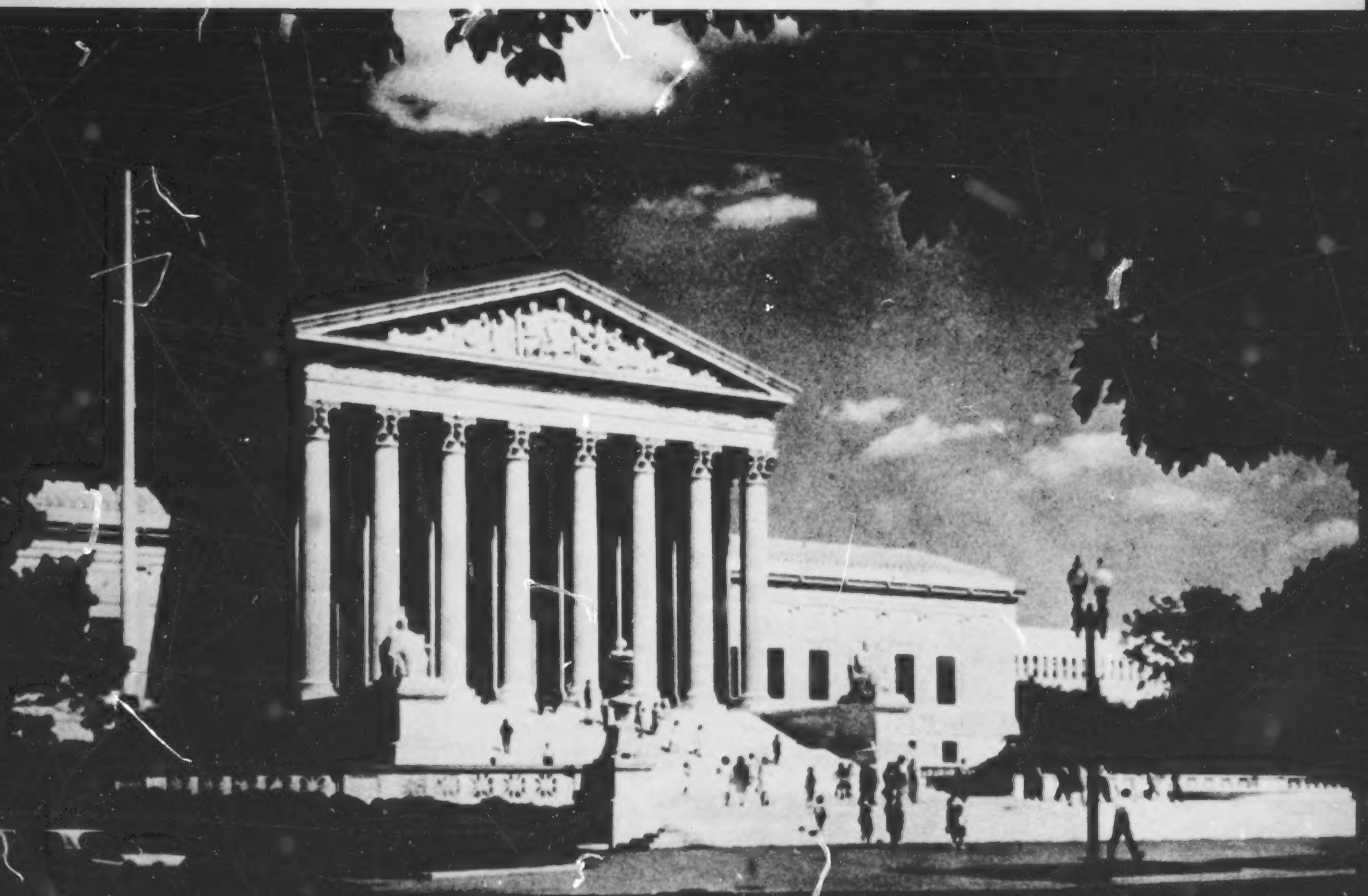


These are relevant audio-visual materials. Descriptions are given in the Appendix.

- In Search of Justice
- Justice and the Law
- Youth and the Law Series
- Some Are More Equal Than Others
- Mr. Pounds
- Justice, Liberty, and Law
- Bill of Rights (The) – Its Meaning Today
- Fight for Our Rights (The) – set I
- Fight for Our Rights (The) – set II
- Great Rights (The)
- Where Our Rights Come From
- Justice and the Poor

CHAPTER THREE

RIGHTS OF THE ACCUSED



RIGHTS OF THE ACCUSED

Poverty or wealth will make all the differences in securing the substance or only the shadow of constitutional protections.

— Justice Rutledge

Every man is a born battler for the law in the interest of society.... Every despotism has begun with attacks on private law, with the violation of the legal rights of the individual.

— Rudolf von Jhering

Our civilization has decided, and very justly decided that determining the guilt or innocence of men is a thing too important to be trusted to trained men.... when it wishes anything done that is really serious, it collects twelve of the ordinary men standing about.

— G.K. Chesterton

Lawyers have been known to wrest from reluctant juries triumphant verdicts of acquittal for their clients even when those clients, as often happens, were clearly and unmistakably innocent.

— Oscar Wilde

Injustice is relatively easy to bear; what stings is justice.

— H.L. Mencken

INTRODUCTION

In this unit students are not only introduced to constitutional rights guaranteed to the accused, but also gain an understanding of criminal procedure.

Students find this unit extremely interesting since they have been bombarded by the media with sensational examples of confrontations with the legal system. Those students with direct experiences with police or courts should be encouraged to share them with the class.

Take advantage of resources in your area and of the Human and Institutional Resource list developed by the class.

CURRICULUM OBJECTIVES

To familiarize students with some of the fundamental issues centering around rights of the accused.

To introduce students to a major problem which confronts our legal system: the desire to apprehend, convict, and punish offenders versus the necessity to maintain and protect the rights of the accused.

To familiarize students with the major legal rights of the accused that are protected by law. Topics which should be covered are:

- a. search and seizure
- b. right to a speedy trial
- c. right to counsel
- d. "Miranda" rights
- e. right to an impartial jury and an impartial judge
- f. right to confront and cross-examine witnesses
- g. right to be able to call witnesses on his/her behalf
- h. right against self-incrimination

To familiarize students with several cases which have been significant in establishing the rights of the accused.

TEACHER BACKGROUND INFORMATION

THE JUDICIAL PROCESS:

BASIC STEPS FROM ARREST TO APPEAL

ARREST

Black's Law Dictionary defines arrest as follows: "To deprive a person of his liberty by legal authority." It may also be defined as taking a person into custody for the purpose of charging him with having engaged in some type of illegal conduct. There are two forms of arrest:

1. without warrant

In order to arrest a suspect without a warrant, a policeman must be able to demonstrate a likelihood that he committed a crime. *Probable cause* means that the policeman need not have been an eyewitness to the crime but only that he has knowledge of sufficient facts and circumstances to convince a reasonable man that the suspected person may have committed the crime.

Convincing the reasonable man is a standard often applied by the Supreme and other courts. The standard simply means that an arrest without warrant, should not be unjust, improper, inappropriate or unreasonable.

2. with a warrant

Arrests with a warrant must also be based upon probable cause, and the warrant can be obtained from a judge or magistrate upon presentation of a valid complaint (a charge) showing probable cause.

Arrests backed by probable cause are valid with or without a warrant.

Miranda Warnings — By virtue of the Supreme Court's ruling in *Miranda v. Arizona*¹ a person being interrogated after having been taken into custody or "otherwise deprived of his freedom in any significant way" must be informed of the following:

- a. That he has the right to remain silent.
- b. That anything he says may be used against him in court.
- c. That he has the right to have an attorney present while he is being questioned.
- d. That the court will appoint an attorney for him if he cannot afford to retain one.

The suspect is free to stop answering questions at any time, but the warnings do not have to be administered *until* he is asked incriminating questions. It is possible, then, for a suspect to be arrested and taken to the police station without having been notified of the above rights as long as the police refrain from asking him anything which might lead to his incrimination. Failure of an arresting officer to administer the warnings may result in a reversal of conviction, whether a federal or a state offense is involved and even if there is enough other evidence to convict the suspect.

Though the *Miranda* decision was delivered in 1966, it remains a subject of controversy today with regard to the continuing debate about law and order. The requirement of the warnings still stands though the Court under the leadership of Chief Justice Burger shows much less tendency to adhere to the libertarian philosophy that led the Warren Court to such a decision.

¹384 U.S. 436 (1966).

PRELIMINARY HEARING

A preliminary hearing is a relatively informal proceeding, presided over by a judge or magistrate, to determine if sufficient evidence exists to have the suspect bound over to the Grand Jury. A preliminary hearing must take place soon after arrest: twenty-four hours is a typical time limit. The proceeding tends to tip the scale in favor of the accused: the prosecution must produce convincing evidence at the early stages of its case that the suspect has committed the crime of which he is accused while the defense can use this information to begin preparing its case.

JAIL OR BAIL?

The judge also decides about bail — whether the suspect can get bail, if it is necessary in the specific case, and what amount to set. First degree murder is the only offense for which bail is not allowed. The judge has discretion to deny bail on offenses other than first degree murder if she/he feels the suspect is a "poor risk" to return to his community while awaiting trial.

In accordance with the Eighth Amendment, bail cannot be excessive. The suspect may be released on his own recognizance (the suspect promises to keep the peace until his trial) if the magistrate feels he poses no threat to the community. If the magistrate denies bail, or the suspect cannot afford to pay it, he is sent to jail to await trial, and the time he spends there is deducted from his sentence if he is found guilty.

GRAND JURY

It is the function of a grand jury to decide two questions: (1) whether a crime was committed; and (2) whether, on the basis of the evidence presented, the suspect could possibly have committed the crime. A grand jury is composed of 23 people, 12 of whom are needed to return an *indictment*, (an accusation in writing). Indictments are also known as *true bills*. A suspect may be charged only on charges appearing on the indictment. Therefore, if a person is arrested on suspicion of first degree murder, the prosecution will ask for an indictment on counts of first degree murder, second degree murder, voluntary manslaughter, involuntary manslaughter, and aggravated assault. If the prosecution cannot adequately prove its case for first degree murder and no conviction results, it can still attempt to have the suspect convicted on a lesser charge.

The grand jury conducts its proceedings in private: neither the accused nor his attorney is present. Grand jury proceedings are required only in cases involving federal offenses or felonies. Some counties are eliminating them entirely because they add an extra step to courts which are already suffering from heavy backlogs.

ARRAIGNMENT AND PLEA

Arraignment simply means the bringing of the accused before the judge or magistrate so that he can be formally charged with a crime. The bill of indictment is read him in the presence of a judge, who has the power to try felony cases.

The accused can plead guilty or not guilty at his arraignment. In many, many cases, however, the actual arraignment has been preceded by a *plea bargaining* session between attorneys.

PLEA BARGAINING

The right to a jury trial may be waived and the great majority of those entitled to a jury trial do so by plea bargaining.

Plea bargaining means that the defense will exchange a guilty plea by the defendant for a reduction in the charges by the prosecution. This exchange is presently encouraged by the system because it saves court time and the taxpayers money. Some prosecutors also encourage plea bargaining in cases they feel might be difficult to prove, so they settle for a guilty plea on a lesser charge. Defendants who are guilty often agree to it because it is to their advantage to admit to the lesser charge and endure the lesser penalty rather than face the prospect of being convicted on a charge carrying a greater penalty.

By pleading guilty the defendant foregoes the right to a jury trial and accepts whatever penalty accompanies the offense. Since, after admitting guilt to this charge he can never thereafter raise any objections to his conviction, it is important that the defendant understand the meaning of his plea of guilty.

PRE-TRIAL MOTIONS

Pre-trial motions are formal requests put to the court before the actual beginning of trial.

1. Motion to Quash the Indictment

This is a request by the defendant to stop the proceedings before the trial stage because there is not enough evidence to warrant a trial. The court will consider this motion and, if it agrees that evidence is insufficient to merit trial, will grant the motion, the defendant will go free and there will be no further proceedings. If it disagrees and finds enough evidence for trial, the defendant will be tried as scheduled. The prosecution may appeal this motion to a higher court without placing the defendant in double jeopardy: double jeopardy means being *tried* twice for the same offense.

2. Motion for a Change of Venue

This motion requests the court to allow the trial to be moved to a different court in a different physical location if, for example, there has been unfair adverse publicity for the defendant. The trial of Dr. Sam Sheppard¹ is one instance where the defendant received extremely unfair publicity, to which nearly everyone who could have been a juror was exposed. His attorneys tried unsuccessfully to obtain a change of venue, and his conviction was reversed on the grounds that adverse publicity had made it impossible for him to receive a fair trial by an impartial jury.

3. Motion to Suppress Evidence

This is a request to disallow evidence gathered in an unconstitutional manner. Unconstitutionally gathered evidence would include, for instance, an illegal search and/or seizure, or a confession obtained without reading a defendant his Miranda warnings. The granting of this motion means that the introduction of such evidence at trial would be prohibited.

TRIAL

The Sixth Amendment guarantees a defendant the right to a speedy trial. Most states have a specific time limit (usually 120 days) between arrest and trial. If that length of time is exceeded, the suspect goes free with immunity from further prosecution for that offense. The 120-day limit does not, however, include continuances, or postponements, which are agreed upon by both the defense and the prosecution.

¹ The case *Sheppard v. Maxwell*, 394 U.S. 333 (1966) is most useful for illustrating the difficulty of striking a balance between a free press and an individual's right to trial by impartial jurors. See IPLE manual, *Fair Trial v. Free Press*, where this case is treated in more detail.

Trial by Jury: The right to a jury trial may be waived by plea bargaining.

Jury Selection: Twelve persons usually constitute a jury. Names of prospective jurors are taken from voter registration lists. (Failure to register to vote thus also excludes a person from another aspect of the governmental process — participation in the judicial system.) Attorneys for both the prosecution and for the defense may question jurors-to-be, but in-depth questioning takes place only in very serious cases. The jury selection process can be very time-consuming, but the time is considered a necessary investment when conviction or acquittal represent a lengthy term in prison as against freedom. In highly important lawsuits (the trial of former Attorney General John Mitchell is one example) both sides will often spend large amounts of money and time and even hire psychologists for the purpose of investigating the backgrounds of everyone who could be called as a juror when their case comes up for trial. Since the pool of jurors can be as large as several hundred persons, such an investigation requires quite an effort. It will pay off, however, if the attorneys can determine beforehand, through the investigation, which jurors are likely to be unsympathetic to their arguments, and question them in such a way that they can be disqualified.

The Trial: The following are the steps in the trial procedure:

- a. Opening statements are made by the attorneys for each side.
- b. The Prosecution presents its evidence. In criminal cases, it must prove its case "beyond a reasonable doubt." The standard in civil cases is to prove by "a preponderance of evidence."
- c. The Defense presents its evidence. A defendant is permitted, by virtue of the Fifth Amendment, to refuse to testify against himself.

Presentation of evidence includes the cross-examination of witnesses by attorneys for both sides.

- d. Both sides present closing arguments.

After the closing arguments, the judge delivers her/his instructions to the jury, and charges them with the responsibility for determining the guilt or innocence of the accused. The judge tells the jury what the law is on the matter in controversy. The jury's responsibility is then to determine whether the defendant has broken the law. They do this by weighing the evidence of the prosecution and the defense and arriving at what is, in their collective opinion, the truth.

A trial is normally public. Observers are permitted and while they may not walk in and out of the courtroom at will, which would be distracting to the participants, they are permitted to enter at the opening of the proceedings and to remain for their duration, unless the judge orders the court to be cleared.

After the judge has delivered the instructions and given the charge to the jury, they withdraw to the jury room for deliberation in private.

VERDICT

When the jury has reached its conclusions, they return to the courtroom and the foreman (a spokesperson chosen from among the jurors by the jurors themselves) announces the verdict. If the defendant is found not guilty, he goes free with no danger of being re-tried for that offense in accord with the Fifth Amendment's prohibition against double jeopardy ("...nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb..."). If the accused is found guilty, the judge can sentence him immediately or there may be a special sentencing hearing later. In the event of a "hung jury," that is one not able to reach the necessary (in most states) unanimous verdict, a date is set for re-trial. This does not constitute double jeopardy because there has been no determination of guilt or innocence.

MOTIONS FOR A NEW TRIAL

After the verdict has been delivered but before sentencing has taken place, the defendant, usually through his attorney, may move for a new trial. The attorney claims that sufficiently grave errors in procedure had been made at the first trial as to have made it unfair and the defendant is entitled to a new proceeding. If this motion is denied, the defendant is sentenced.

SENTENCING

Handing down of sentence is normally done by the judge, except where the crime has been murder or rape in which cases the jury determines the sentence. Most states have set minimum/maximum terms for each crime; burglary, for example, might carry a penalty of one to ten years in prison. Within those statutory guidelines the judge is free to set his own minimum-maximum penalty in each individual circumstance, giving a particular burglar three to five years perhaps. The convicted person must serve the minimum and no more than the maximum time of the sentence, and can be paroled for good behavior. A convict is normally eligible for *parole* one-third of the way through his minimum sentence. Having received three to five years, the burglar above would be eligible for parole after one year, though his eligibility does not guarantee that he will obtain parole.

POST-CONVICTION REMEDIES

After his conviction and sentencing, a person who is not satisfied with the justice the court has dispensed has two ways to attempt to correct the situation:

a. Appeal

In the process of appeal, the trial court record is sent up to the appellate court, and the judge (or judges) there examine the proceedings. They then make a decision to affirm (to approve what the trial court did) or to reverse (to nullify the trial court's results). This decision is in writing and the written decision plus the reasoning behind it constitute the appellate court's *opinion*. A decision which is reversed and *remanded* is one where the court has disagreed with the trial court below and sends the case back down to the trial court level to be re-heard. Most cases on appeal go no higher than the highest state level court.

b. Pardon and Commutation

Pardons are of two types: (1) those granted by a governor for crimes committed within her/his state against state law; (2) those granted by the President for offenses against federal statutes.

Commutation means a shortening of sentence, rather than an elimination of it.

ACTIVITY

MOTIVATING DISCUSSION QUESTIONS

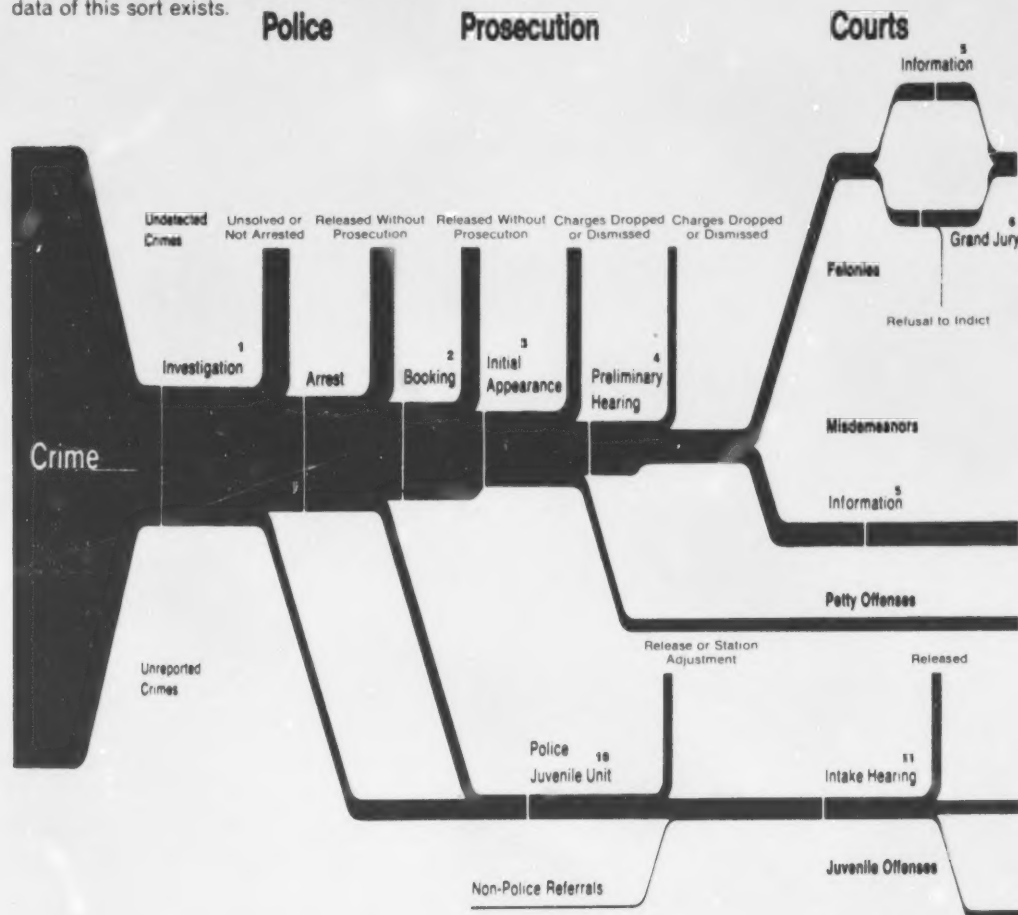
1. Why is there a need to protect the rights of people who have been accused or are suspected of a crime?
2. Give some examples of the ways in which such people can or have been abused by authorities. What types of suspects have traditionally received the worst treatment by police and the courts? Why?
3. Discuss some of the changes which you know have taken place in terms of rights of the accused since the Constitution was written. Give some examples, for instance, in which you compare old television shows such as "The Untouchables" with new ones such as "Kojak" — or any others you can think of. What differences do you note in the way offenders were treated in the older shows as opposed to the newer ones?
4. What do we mean by the term a "fair trial"? What, for instance, constitutes "fair"? Has the definition of a fair trial changed throughout the years or has what is "fair" always been the same thing?

STUDENT HANDOUT

JUDICIAL PROCESS

A general view of The Criminal Justice System

This chart seeks to present a simple yet comprehensive view of the movement of cases through the criminal justice system. Procedures in individual jurisdictions may vary from the pattern shown here. The differing weights of line indicate the relative volumes of cases disposed of at various points in the system, but this is only suggestive since no nationwide data of this sort exists.



1 May continue until trial.

2 Administrative record of arrest. First step at which temporary release on bail may be available.

3 Before magistrate, commissioner, or justice of peace. Formal notice of charge, advice of rights. Bail set. Summary trials for petty offenses usually conducted here without further processing.

4 Preliminary testing of evidence against defendant. Charge may be reduced. No separate preliminary hearing for misdemeanors in some systems.

5 Charge filed by prosecutor on basis of information submitted by police or citizens. Alternative to grand jury indictment; often used in felonies, almost always in misdemeanors.

6 Reviews whether Government evidence sufficient to justify trial. Some States have no grand jury system; others seldom use it.

7 Appearance for plea; defendant elects trial by judge or jury (if available); counsel for indigent usually appointed here in felonies. Often not at all in other cases.

8 Charge may be reduced at any time prior to trial in return for plea of guilty or for other reasons.

9 Challenge on constitutional grounds to legality of detention. May be sought at any point in process.

10 Police often hold informal hearings, dismiss or adjust many cases without further processing.

11 Probation officer decides desirability of further court action.

12 Welfare agency, social services, counselling, medical care, etc., for cases where adjudicatory handling not needed.

Corrections

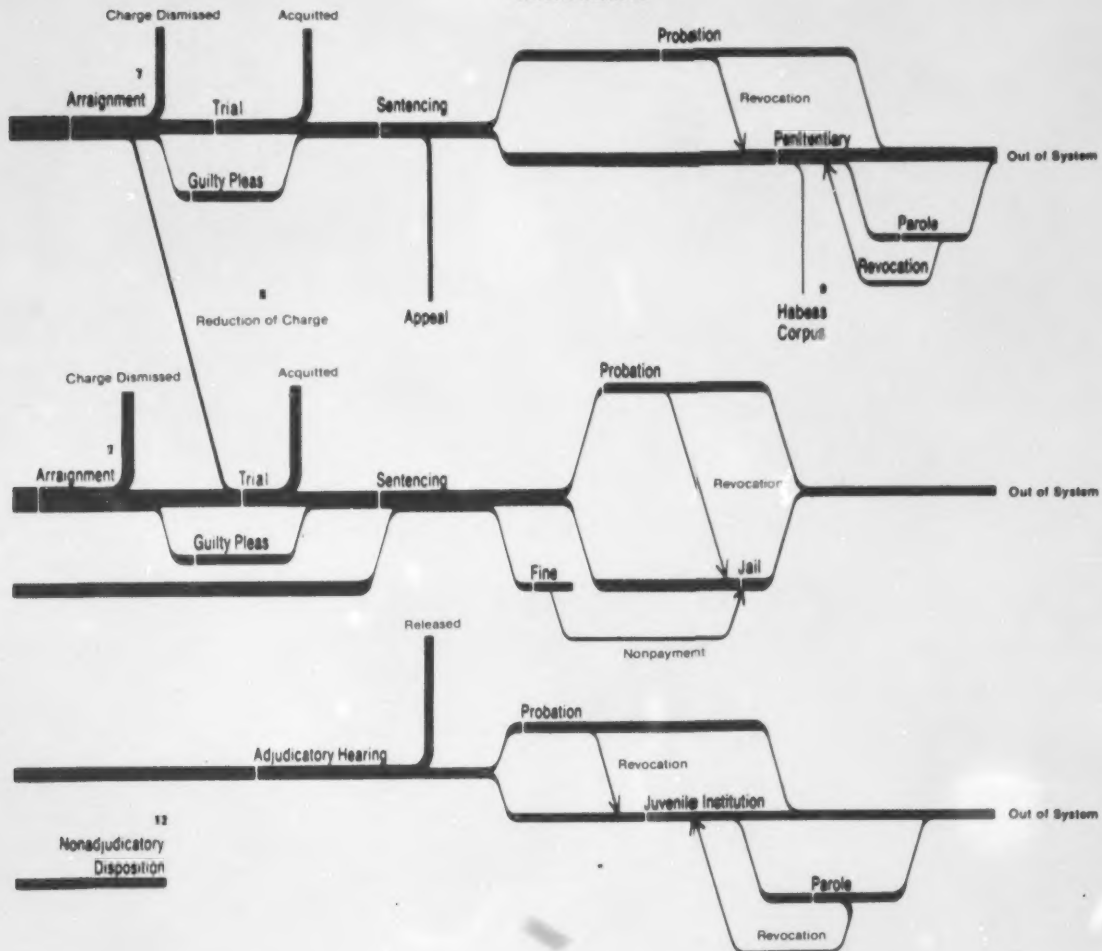


Chart courtesy of: The President's Commission on Law Enforcement and Administration of Justice

ACTIVITY

THE JUDICIAL PROCESS – ROLE-PLAY



OBJECTIVES: To have students learn the steps in the judicial process.

To reinforce students' understanding of the judicial process by dramatizing some of the most important steps relating to the rights of the accused.

ACTIVITY:

1. Give students copy of Student Handout or have them refer to their outline of the Criminal Justice System. Review the steps with the students. (Refer to Teacher Background: The Judicial Process).
2. Select certain steps in the process, such as arrest, interrogation, bail, arraignment, jury selection, plea bargaining, etc. and set up role play situations. (See Chapter One for further instructions on role play).
3. After each role-play discuss the accuracy and legality of each situation dramatized.
4. This would be a good occasion to invite a lawyer and/or police officer to participate and comment on the accuracy of the role-plays.
5. Further follow through would be to assign teams of students to watch several television programs dealing with crime. Their aim ought to be to see whether the crime shows follow the judicial procedure accurately and legally.

ACTIVITY

A TRIP TO COURT



OBJECTIVES: To familiarize students with courtroom procedures and procedural safeguards designed to protect the rights of the accused.

To make students aware of the importance of judicial protection and the rights of the accused.

ACTIVITY: Arrange to have the class visit court one day while a trial is being conducted. Check beforehand to make sure that the case being tried is a criminal one.

When the class returns from the trip, have them discuss what they saw and heard while in court.

Some of the general questions may include:

1. What was the role of the defense attorney? The prosecutor? The judge?
2. What is meant by the words "innocent until proven guilty"? Give examples of how you felt this principle was or was not being put into practice during our visit to court?
3. What is meant by the term "burden of proof"? Who had the burden of proof?
4. If it is known that the accused is guilty of the offense with which he has been charged, is he entitled to a trial? Why?
5. As a result of your trip to court, what did you learn about legal rights guaranteed to the accused? Which rights did you see protected? Were there any which you felt were violated?

ACTIVITIES

CONSTITUTIONALLY GUARANTEED RIGHTS OF THE ACCUSED

OBJECTIVE: To expose students to constitutional guarantees for criminal procedure and the rights of the accused.

To provide students with a basic knowledge of legal safeguards that protect the rights of the accused.

To provide a basic knowledge of criminal procedure that will prove helpful when examining case studies in later lessons.

ACTIVITIES: The Student Handout consists of a list of Constitutional references to criminal procedure and rights of the accused. The Constitutional laws of criminal procedure are contained in two sections of the original Constitution and five of the amendments. Each rule is restated in its basic form, with its source in parentheses.

Several activities are possible:

1. Students should be asked to name as many rights of the accused as they can that are guaranteed by the Constitution. They should list any ways in which they feel individuals should be protected, whether or not they feel laws actually exist to provide such protection.

After students have finished compiling their individual lists, a large list of items appearing on the students' lists can be put on the blackboard. Then refer to the Student Handout and compare the rules with the items on the class's list. Focus on those rights which appeared on the student lists but are not actually protected by the Constitution. Ask students why they feel those rights should be protected. Discuss the possibility of these rights being protected by other sources of law (e.g., local ordinances, state and federal laws).

2. One or two students could do a research project in which they investigate whether some of the rights of the accused which the class felt should be protected (but which were not protected in the Constitution) are guaranteed elsewhere.
3. Also examine those rights which students neglected to include on their lists. Discuss the importance of these rights and ask students to provide examples of what could happen if such rights were not protected.
4. Plan a class visit to the school library where the class can research the questions on the list below. Using the bibliography at the end of this chapter, give students some guidance on where they could get the information.

1. What is a *writ of habeas corpus*?
2. What is a federal crime?
3. What constitutes a search? A seizure?

4. What is double jeopardy? How did this originate?
 5. How is a "speedy trial" defined?
 6. What is excessive bail? Who determines this?
 7. Why are there public trials?
 8. What is cruel and unusual punishment?
 9. What is due process under the law?
 10. Why are individuals not informed of these rights? Are they applicable to everyone? If not, why aren't they? (juveniles, the insane, criminals).
 11. How are impartial juries selected? Why is this sometimes impossible?
5. There is a *Jury Game* written by Richard K. Weintraub and George W. Echam, published by Zenger Publishing, Inc., Gateway Station 802, Culver City, California 90230, that would fit very well at this point. It includes instructions and materials for simulations of 2 criminal cases and two civil cases. Included are such materials as pictures and biographies of prospective jurors, sample questions for lawyers, court reporter tally forms and background material for the 4 cases. The game is designed for three 50-minute periods, but a briefer version can be used.
 6. A survey could be produced and distributed to other classes to test their knowledge of their legal rights. If there is a lack of knowledge, to what can this be attributed in today's society? What does this say about the significance of legal education programs?
 7. Have the class develop an attractive, easy to read pamphlet that can be distributed to students in the school to inform them about the legal rights of the accused. The art department in the school might help with supplying paper and suggesting color schemes, lettering, illustrations, etc.
 8. Discuss variations that exist in criminal procedure from state to state. Have the class provide examples. They can, for instance, research current newspaper articles on local, state, and federal crimes. Some questions which may be included:
 1. Why do such differences between federal, state and local laws exist?
 2. How did they come about?
 3. Would a more uniform procedure be better? Why?
 9. Set up a series of role-plays dramatizing some of the critical rights of the accused. Have students role-play two versions: one in which the rights of the accused are protected, one in which they are violated. (Refer to section on role-playing in Chapter One.)

STUDENT HANDOUT

CONSTITUTIONALLY GUARANTEED RIGHTS OF THE ACCUSED



1. The federal government may not suspend the writ of habeas corpus for persons whose freedom is limited by federal power. There is one exception. The writ may be suspended if (1) there is either rebellion or invasion, (2) during such rebellion or invasion the public safety requires its suspension. (Art. I Sec 9)
2. Except for impeachment, all federal crimes shall be tried by a jury. (Art. III Sec. 1)
3. All federal trials will be held in the state where the crime was committed. (Art. III Sec. 1)
4. People have a right to not have their persons, houses, papers, and effects unreasonably searched or seized by the federal government. (4th Am.)
5. Search warrants and arrest warrants can be issued to federal officers only on probable cause. The officer seeking the warrant must swear or affirm that the information he is giving in order to receive the warrant is true. (4th Am.)

STUDENT HANDOUT

6. A search warrant or arrest warrant issued to a federal officer must specifically describe the place to be searched or the persons and things to be seized. (4th Am.)
7. In order to charge a person with a serious federal crime, there must be a Grand Jury indictment. However, this rule does not apply to crimes committed in the land or naval forces or in the militia when the alleged crime is in actual service and it is a time of war or of public danger. (5th Am.)
8. No person charged with committing a federal crime may be placed in jeopardy more than once for the same defense. (5th Am.)
9. No person may be forced by the federal government to be a witness against himself or incriminate himself. (5th Am.)
10. The federal government may not deprive any person of his life, liberty, or property, except with due process of the law. (5th Am.)
11. In criminal prosecutions in federal courts, the defendant has a right to a speedy trial. (6th Am.)
12. A person charged with a federal crime has the right to a public trial. (6th Am.)
13. A person charged with a federal crime has the right to an impartial jury. (6th Am.)
14. Federal trials must take place in the state and district where the crime occurred. (6th Am.)
15. A person charged with a federal crime is entitled to be informed of the nature and cause of the charges against him and to be confronted with the witnesses against him. (6th Am.)
16. A person charged with a federal crime has the right to compel witnesses in his favor to testify at his trial. (6th Am.)
17. A person charged with a federal crime has the right to have the assistance of counsel for his defense. (6th Am.)
18. The federal government may not impose excessive bail. (8th Am.)
19. The federal government may not impose an excessive fine. (8th Am.)
20. The federal government may not inflict cruel or unusual punishment. (8th Am.)
21. No state may deprive any person of his life, liberty, or property, except by due process of law. (14th Am.)
22. No state may deny anyone in its jurisdiction the equal protection of the laws. (14th Am.)

STUDENT HANDOUT

Note that under the Fourteenth Amendment as long as due process of law is maintained, someone may be deprived of his rights. The criminal process in operation can be somewhat reduced for examination. In a response to a citizen's complaint, a suspect may be arrested on a warrant or sent a summons to appear in court at some future time. The complaint can also come from the policeman who observes the crime. Often the arrest takes place at the scene of the crime and the complaint will follow. If arrested, the suspect may be released on bail at any time. In addition, the state may be required to hold a preliminary hearing to show probable cause for believing that the suspect has committed a crime. If probable cause is demonstrated — either a grand jury indictment or a prosecutor's information may be filed. The suspect will appear at court for a formal arraignment at which time he will be asked to plead. If he pleads guilty, he will be tried and sentenced in the event he is found guilty. The defendant may appeal a conviction on a plea of not guilty. Sentencing may include confinement or probation or a combination of both. Parole is supervised freedom ordered by a parole board prior to his time of release.

The theory behind the bail system is that a person charged with a crime may put up a certain amount of money, to assure his appearance at trial. This sum will be forfeited if he does not appear. The amount of bail is supposed to be just enough to assure that the suspect will not "skip." A suspect's prior record, the seriousness of the crime, his personal wealth, and his roots in the community are all considered. The bail system is intended to mirror the presumption of innocence — since all suspects are presumed innocent until proved guilty, they should not have to spend the time prior to trial in jail. This is the theory. The practice is often opposite. If a judge determines that a suspect should not be released prior to trial, he will set bail at a prohibitive amount. If he determines that pretrial release will be safe, bail will likely be nominal.

In 1967, the President's Commission on Law Enforcement and Administration of Justice reported:

Although bail is recognized in the law solely as a method of insuring the defendant's appearance at trial, judges often use it as a way of keeping in jail persons they fear will commit crimes if released before trial. In addition to its being of dubious legality, this procedure is ineffective in many instances. Professional criminals or members of organized criminal syndicates have little difficulty in posting bail, although, since crime is their way of life, they are clearly dangerous.

If a satisfactory solution should be found to the problem of the relatively small percentage of defendants who present a significant risk of flight or criminal conduct before trial, the Commission would be prepared to recommend that money bail be totally discarded. Finding that solution is not easy

A partial solution for the problem would be to provide an accelerated trial process for presumably high-risk defendants

In any case, money bail should be imposed only when reasonable alternatives are not available. This presupposes an information-gathering technique that can promptly provide a magistrate with an array of facts about a defendant's history, circumstances, problems, and way of life.

A DEBATE:

RIGHTS OF THE ACCUSED; THE CASE OF JODY FRANKS

OBJECTIVES: To develop insights into legal defense and prosecution.

To present a situation in which the rights of an accused individual have been violated in order to test the students' awareness of those rights.

- ACTIVITY:**
1. Students should read the Student Handout. Do *not* discuss the case with the students. Instead, have them write a brief report in which they:
 - a. discuss the major issues involved
 - b. state the decision they would make if they were the judge
 - c. describe what they think a judge who actually heard the appeal would decide
 - d. any other remarks

Students could be asked to outline the case using the case study approach described in Chapter One. This will introduce them to the procedure that they will encounter later when examining actual cases.

2. After students have read and outlined the case, divide the class into two groups. One group should be designated in favor of the contention that Franks has a right to a new trial; the other group should be assigned the role of debating against this contention.

The preparation for this debate can include a library trip for research, and interview with members of the legal profession, or students can be asked to debate the issue with a copy of the Constitution (included as an Appendix) as their only resource.

After groups have discussed the arguments and planned their strategies with fellow members, have them select two or three spokesmen to represent the group.

3. Once the debate has taken place, conduct a debriefing in which the major issues highlighted in the debate are discussed. The discussion should focus on several general topics:
 - a. What were the major issues raised by this case?
 - b. Compare and contrast procedure of the debate to that of actual trials or hearings.
 - c. Compare the decision reached by the judge in the debate to that which would have been reached by an actual judge.
 - d. What arguments or evidence could the groups have used to help them strengthen their individual cases? Would an actual attorney have had access to such resources?
 - e. Be sure to discuss the problem raised when the rights of an accused person are violated and this results in a dismissal of the case even when the defendant is known to be guilty. Have students consider which is more important: that innocent defendants are not unjustly convicted; or that the guilty are sometimes set free.

STUDENT HANDOUT

THE CASE OF JODY FRANKS



It was a cold and windy night, and Dr. Mark Chase kept pulling his collar tight around his neck to keep as warm as possible. His thoughts were on his dog and how much he hated having to walk it on nights like these when he heard a small stifled scream coming from behind him. He bolted around and saw a young man quickly running from the alley he had just passed. Chase's eyes scanned the area to see if anyone was in sight who could help. Though no one else was on the street, several people were learning out of their windows.

"Somebody call the cops," Chase shouted as he ran into the alley. Toward the back of the alley he found a young woman huddled against a pile of trash. He quickly determined that she was dead, and then turned toward the policemen who had already managed to arrive on the scene.

Within several hours after the incident, two men had been apprehended that fit the description Chase had given to Detective Orwell of the Homicide Department. One of the young men, Jody Franks, was a known troublemaker. Though he had no convictions, he had been picked up before for a number of petty crimes but had always been released because of insufficient evidence: most of these offenses had been drug-related.

Detective Orwell was almost certain that this was his man, and Chase's positive identification of him as the person running out of the alley only minutes before the woman's body was discovered only confirmed his suspicions. Nevertheless, he had no direct proof that Franks was the murderer. For almost twenty-four hours Orwell questioned Franks; he gave him nothing to eat and allowed him no sleep. Finally, Franks confessed to the crime. He admitted raping and killing the young woman.

A search warrant was obtained and the police were able to search Franks' apartment where they found the murder weapon and a considerable amount of heroin which Franks had confessed to be selling.

As a result of this evidence Franks was convicted of first degree murder and of possessing and selling narcotics.

ACTIVITIES

SEARCH AND SEIZURE



OBJECTIVES: To introduce students to the topic of search and seizure.

To provide a basic understanding of the laws which govern search and seizure procedures.

To introduce students to important members of the criminal justice system.

ACTIVITY: 1. Ask a representative of the police department in the community to come and speak to students about the topic of search and seizure procedures. Policemen/women are generally eager to help educate young people about matters pertaining to law enforcement. It is important to give the police department sufficient advance notice and to let them know what the specific topic of discussion will be.

Ask the police officer to describe the two types of search and seizure: those with a search warrant and those without. The officer should also be sure to describe the conditions and limitations for both, to explain what is considered to be a "reasonable" search, and to delineate the courtroom consequences of "unreasonable" or illegal searches.

Encourage the officer to describe more unusual instances in which the government is permitted to invade the privacy of a citizen — e.g. wiretapping, bugging, taking blood tests.

Finally, ask the police officer to review state search and seizure laws and to discuss how your state's laws differ from those of other states.

2. A few days before the police officer's visit, have several students plan role-plays in which they demonstrate search and seizure procedures and limitations. Some examples of situations which could be role-played are:

- a. school authorities searching students' lockers for dangerous weapons
- b. a police officer's search of a young man's car when he stops him for speeding
- c. police get permission to tap the phone of a suspected organized crime boss and get information about his son's friend, who is not a member of the syndicate, breaking into a drug store.

3. Have the students act out the skits before the visiting officer. Ask the officer to point out possible infringements of the individual's rights. Discuss the skits with the students and the officer, posing alternative ways in which each of the incidents could have taken place and asking students if they feel any rights have been infringed upon in those cases.

4. The police officer might be requested to show a police training film on the subject of search and seizure.

STUDENT HANDOUT

In the Municipal Court of the

_____ of _____ County of _____ 172

State of New Jersey

State of New Jersey.

vs.

SEARCH WARRANT

Defendant.

To the Sheriff, or any Constable, Marshal, or Police Officer of said County, or to any Officer or Trooper of the New Jersey State Police:

WHEREAS, proof, by oath, having been this day made before this court by

of the _____ of

County of _____ State of New Jersey, and there is probably cause for believing that said affidavit is true, that the following goods:

(describe articles as in complaint)

have been feloniously stolen and carried away from his _____ and that he has reasonable cause to suspect, and does suspect that said goods and chattels are concealed in

(describe premises as in complaint)

You are Therefore Commanded, in the name of the State of New Jersey, to make immediate search of the person of the defendant and, in the daytime, of the building above situated and described, for the said goods and chattels; and if you find the same, or any part thereof, that you secure the same and bring it or them forthwith before this court with the body of the defendant, to be dealt with according to law.

Signed and sealed this
day of _____

19

Judge - Magistrate

of the _____ of
County of _____ N. J.

Officer executing warrant must give receipt for property, specifying it in detail, to the person from whom it was taken, or in whose possession it was found, or, in absence of any person, leave receipt in place where he found the property, make inventory publicly or in presence of person from whom property is taken and applicant for warrant, if he be present; return warrant and deliver property taken to the magistrate issuing it along with the body of the defendant if he be arrested.

STUDENT HANDOUT
RETURN ON SEARCH WARRANT

Returned this day of, A.D. 19

Warrant served, 19..... at A.M./P.M. by making search
as within directed with assistance of the following persons:

Upon said search I found and seized and duly inventoried the following property in the presence of
....., a credible person.

I further certify and swear that a copy of this warrant, together with an itemized receipt for the
property taken was given to

- a. The person from whom it was taken.
- b. Left in place where said property was found, no person being present.

Subscribed and sworn to before me
this day
of, 19

TEACHER BACKGROUND INFORMATION

MIRANDA AND SINCE MIRANDA



The Supreme Court Building¹

In effect, the *Miranda* Court said that all in-custody interrogation is inherently coercive and certain warnings are necessary to satisfactorily reduce the coercive atmosphere. If a suspect insists on the rights contained in the warning, the questioning must stop and the rights must be provided. Extensive excerpts from Chief Justice Warren's opinion in *Miranda* follow:

"The cases before us raise questions which go to the roots of our concepts of American criminal jurisprudence; the restraints society must observe consistent with the Federal Constitution in prosecuting individuals for crime. More specifically, we deal with the admissibility of statements obtained from an individual who is subjected to custodial police interrogation and the necessity for procedures which assure that the individual is accorded his privilege under the Fifth Amendment to the Constitution not to be compelled to incriminate himself. . . .

Our holding shall be spelled out with some specificity in the pages which follow but briefly stated it is this: the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly, and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to

¹Photo courtesy of The Supreme Court of the United States.

consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.

The constitutional issue we decide in each of these cases is the admissibility of statements obtained from a defendant questioned while in custody and deprived of his freedom of action. In each, the defendant was questioned by police officers, detectives, or a prosecuting attorney in a room in which he was cut off from the outside world. In none of these cases was the defendant given a full and effective warning of his rights at the outset of the interrogation process. In all the cases, the questioning elicited oral admissions, and in three of them, signed statements as well which were admitted at their trials. They all thus share salient features — incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights.

Again we stress that the modern practice of in-custody interrogation is psychologically rather than physically oriented... Interrogation still takes place in privacy. Privacy results in secrecy and this in turn results in a gap in our knowledge as to what in fact goes on in the interrogation rooms. A valuable source of information about present police practices, however, may be found in various police manuals and texts which document procedures employed with success in the past, and which recommend various other effective tactics. It should be noted that these texts professedly present the most enlightened and effective means presently used to obtain statements through custodial interrogation.

The officers are told by the manuals that the 'principal psychological factor contributing to a successful interrogation is *privacy* — being alone with the person under interrogation.' The efficacy of this tactic has been explained as follows:

'If at all practicable, the interrogation should take place in the investigator's office or at least in a room of his own choice. The subject should be deprived of every psychological advantage. In his own home he may be confident, indignant, or recalcitrant. He is more keenly aware of his rights and more reluctant to tell of his indiscretions or criminal behavior within the walls of his own home. Moreover his family and other friends are nearby, their presence lending moral support. In his own office, the investigator possesses all the advantages. The atmosphere suggests the invincibility of the forces of the law.' ...

When the techniques described above prove unavailing, the texts recommend they be alternated with a show of some hostility. One ploy often used has been termed the 'friendly-unfriendly' or the 'Mutt and Jeff' act:

'.... In this technique, two agents are employed, Mutt, the relentless investigator, who knows the subject is guilty and is not going to waste any time. He's sent a dozen men away for this crime and he's going to send the subject away for the full term. Jeff, on the other hand, is obviously a kind-hearted man. He has a family himself. He has a brother who was involved in a little scrape like this. He disapproves of Mutt and his tactics and will arrange to get him off the case if the subject will cooperate. He can't hold Mutt off for very long. The subject would be wise to make a quick decision. The technique is applied by having both investigators present while Mutt acts out his role. Jeff may stand by quietly and demur at some of Mutt's tactics. When Jeff makes his plea for cooperation, Mutt is not present in the room.'

From representative samples of interrogation techniques, the setting described by the manuals and observed in practice becomes clear. In essence, it is this: To be alone with the subject is essential to prevent distraction and to deprive him of any outside support. The aura of confidence in his guilt undermines his will to resist. He merely confirms the preconceived story the police seek to have him describe. Patience and

persistence, at times relentless questioning, are employed. ... When normal procedures fail to produce the needed result, the police may resort to deceptive stratagems such as giving false legal advice. It is important to keep the subject off balance, for example, by trading on his insecurity about himself or his surroundings. The police then persuade, trick, or cajole him out of exercising his constitutional rights.

Even without employing brutality, the 'third degree' or the specific stratagems described above, the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals. ...

In the cases before us today, given this background, we concern ourselves primary with this interrogation atmosphere and the evils it can bring. ...

In these cases, we might not find the defendants' remarks to have been involuntary in traditional terms. Our concerns for adequate safeguards to protect precious Fifth Amendment rights is, of course, not lessened in the slightest. In each of the cases, the defendant was thrust into an unfamiliar atmosphere and run through menacing police interrogation procedures. The potentiality for compulsion is forcefully apparent, for example, in *Miranda*, where the indigent Mexican defendant was a seriously disturbed individual with pronounced sexual fantasies, and in *Stewart*, in which the defendant was an indigent Los Angeles Negro who had dropped out of school in the sixth grade. To be sure, the records do not evince overt physical coercion or patented psychological ploys. The fact remains that in none of these cases did the officers undertake to afford appropriate safeguards at the outset of the interrogation to insure that the statements were truly the product of free choice.

It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carries its own badge of intimidation. To be sure, this is not physical intimidation, but is equally destructive of human dignity...

We have concluded that without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely. ...

Our decision in no way creates a constitutional straitjacket which will handicap sound efforts at reform, nor is it intended to have this effect. We encourage Congress and the States to continue their laudable search for increasingly effective ways of protecting the rights of the individual while promoting efficient enforcement of our criminal laws. However, unless we are shown other procedures which are at least as effective in apprising accused persons of their right of silence and in assuring a continuous opportunity to exercise it, the following safeguards must be observed.

The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of forgoing it. ...

In order fully to apprise a person interrogated of the extent of his rights under this system then, it is necessary to warn him not only that he has the right to consult with an attorney, but also that if he is indigent a lawyer will be appointed to represent him. Without this additional warning the admonition of the right to consult with counsel would often be understood as meaning only that he can consult with a lawyer if he has one or has the funds to obtain one. ...

Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. ...

Our decision is not intended to hamper the traditional function of police officers in investigating crime... When an individual is in custody on probable cause, the police may, of course, seek out evidence in the field to be used at trial against him. Such investigation may include inquiry of persons not under restraint. General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process is not affected by our holding. It is an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement. In such situations the compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present.

In dealing with statements obtained through interrogation, we do not purport to find all confessions inadmissible. Confessions remain a proper element in law enforcement. Any statement given freely and voluntarily without any compelling influences is, of course, admissible in evidence. The fundamental import of the privilege while an individual is in custody is not whether he is allowed to talk to the police without the benefit of warnings and counsel, but whether he can be interrogated. There is no requirement that police stop a person who enters a police station and states that he wishes to confess to a crime, or a person who calls the police to offer a confession or any other statement he desires to make. Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today. ..."

The Dissenting Opinions

Justice Clark dissented in part; Justices Harlan, Stewart, and White dissented completely. Justice Harlan argued in his dissent:

'... The Court's opinion in my view reveals no adequate basis for extending the Fifth Amendment's privilege against self-incrimination to the police station... [T]he Court's unspoken assumption that any pressure violates the privilege is not supported by the precedents. ...

While passing over the costs and risks of its experiment, the Court portrays the evils of normal police questioning in terms which I think are exaggerated. Albeit stringently confined by the due process standards interrogation is no doubt often inconvenient and unpleasant for the suspect. However, it is no less so for a man to be arrested and jailed, to have his house searched, or to stand trial in court, yet all this may properly happen to the most innocent given probable cause, a warrant, or an indictment. Society has always paid a stiff price for law and order and peaceful interrogation is not one of the dark moments of the law.

All four of the cases involved here present express claims that confessions were inadmissible; not because of coercion in the traditional due process sense, but solely because of lack of counsel or lack of warnings concerning counsel and silence. For the reasons stated in this opinion, I would adhere to the due process test and reject the new requirements inaugurated by the Court.

Justice White's dissent was based on the need to protect the individual and society against the criminal:

'More than the human dignity of the accused is involved; the human personality of others in the society must also be preserved. Thus the values reflected by the privilege are not the sole desideratum; society's interest in the general security is of equal weight...

There is the not so subtle overtone of the opinion — that it is inherently wrong for the police to gather evidence from the accused himself. And this is precisely the nub of this dissent. I see nothing wrong or immoral, and certainly nothing unconstitutional, with the police asking a suspect whom they have reasonable cause to arrest whether or not he killed his wife or with confronting him with the evidence on which the arrest was based, at least where he has been plainly advised that he may remain completely silent. Until today, 'the admissions or confessions of the prisoner, when voluntarily and freely made, have always ranked high in the scale of incriminating evidence.'

The most basic function of any Government is to provide for the security of the individual and of his property. These ends of society are served by the criminal laws which for the most part are aimed at the prevention of crime. Without the reasonably effective performance of the task of preventing private violence and retaliation, it is idle to talk about human dignity and civilized values.'

SINCE MIRANDA

Though the *Miranda* decision was delivered in 1966, it remains a subject of controversy today with regard to the continuing debate about law and order. The requirement of the warnings still stands though the Court under the leadership of Chief Justice Burger shows much less tendency to adhere to the libertarian philosophy that led the Warren Court to such a decision.

The debate over the Miranda warnings generally centers on a feeling, on the one side, that persons suspected of criminal activity should be able to take advantage of every possible safeguard to protect their liberties when dealing with a system as bureaucratically complicated as the criminal justice system. On the other side, arguments are made that such procedures hamper the police significantly in their efforts to apprehend criminals and bring them to justice. Since approximately 90% of all criminal convictions result from guilty pleas from persons who never have a trial at all, the importance of pre-trial procedures — interrogation and arrest — is clear.

The force of the Miranda decision (1966) has been somewhat lessened by the Burger Court in recent years. *Harris v. New York* (1971) stated that a person who takes the stand in his own defense does not have the right to commit perjury, and in *Michigan v. Tucker* (1974) the Court held that a witness' testimony may be used at trial even if the witness had been questioned without being given full warning of his rights in the Miranda manner. Justice Douglas dissented in these decisions feeling that both would offer encouragement to police officers to be less mindful of the rights of suspects when conducting criminal investigations.

ACTIVITY

RIGHT TO REMAIN SILENT:

MIRANDA V. ARIZONA

OBJECTIVES: To familiarize students with the accused's right to remain silent if arrested.

To provide students with an understanding of the need for this right.

ACTIVITY:

1. Have students read the *Miranda v. Arizona* case which appears on their Student Handout. Ask them to outline the case indicating:

- a. facts
- b. issues
- c. decision they would reach
- d. reasoning and opinions for reaching this decision

(see Chapter One on the case study approach)

2. Discuss the case with the students; pose questions that will stimulate them to get at the important issues involved. Questions may include:

- Many times the rapid discovery of facts and evidence aid law enforcement agents in solving and combatting crimes: therefore, shouldn't police officers have the right to coerce suspects into divulging information? Why or why not?
- What are the benefits, if any, for the accused or suspected to remain silent when questioned by the police? Isn't remaining silent an impediment to justice? Explain. By remaining silent doesn't one imply his/her guilt? Discuss.
- Examine the Fifth and Sixth Amendments to the Constitution. Do you agree with *Miranda* that he had been deprived of his rights according to these amendments? Explain.
- Do you feel that *Miranda* had given up or "waived" his constitutional rights when he signed the confession? Why or why not?

3. Have students read the case again and set up a mock trial in a simplified form. Roles should be assigned for the girl, *Miranda*,¹ the Phoenix police, and the judge. The remainder of the class should split up into defense and prosecution and represent their clients while posing questions to the opposition. (Refer to section on role-play in Chapter One.)

¹ *Miranda* was shot in a bar-room brawl in 1975.

4. Read and discuss the actual court decision with the class. Some questions to consider:

- How does the court's decision compare with the one you reached? How do you account for any differences?
- Explain the difference between the major legal questions raised by *Gideon* and those raised by *Miranda*.
- Explain why the court reached the decision it did.
- Do you know what "Miranda rights" are?



STUDENT HANDOUT

MIRANDA V. ARIZONA

March 3, 1963: the telephone at the Phoenix Police Department jangled — an urgent call like hundreds of others that day. This one, however, was the curtain-ringer for one of the most controversial cases in modern Supreme Court history. The call came from the angry family of an 18-year-old girl who claimed that she had just been raped.

According to the girl's story, she was on her way home from her job at a local movie theater when a car pulled up. A man got out, she said, grabbed her, threw her into the back seat, and tied her hands and feet. The man, whom she had never seen before, drove for about 20 minutes. When he stopped the car, she said, he untied her and forced her to have sexual intercourse. He then drove back to the area where he had picked her up and let her out of the car.

Ten days later, Phoenix police picked up Ernesto Miranda, a 23-year-old Mexican, at his home and took him to the police station. He was placed in a "line-up" with four other Mexican men — all about the same age and build. The 18-year-old girl identified him as the man who had attacked her.

Miranda was then taken to an interrogation room and questioned by two police officers. Two hours later, the officers emerged from the room with a written confession signed by Miranda.

At Miranda's trial, the two officers testified before a jury that during Miranda's interrogation he admitted that he forced the girl into his car, drove away with her, and raped her. The officers said they then asked him to prepare a written confession. At this time, the officers claimed that they read to Miranda a statement typed at the top of the confession form. The statement said that the confession was made voluntarily, without threats or promises of immunity and "with full knowledge of my legal rights, understanding any statements I make may be used against me." The officer who had read this statement aloud to Miranda admitted, however, that it did not say that the person confessing was entitled to an attorney.

Miranda was found guilty of kidnapping and rape. He was sentenced to 20-30 years in prison.

Miranda appealed his case to the Arizona Supreme Court. The issue arose whether his written confession should have been admitted into evidence. Miranda did not have an attorney at the time the statement was made and signed. Therefore, had he been deprived of his right to remain silent under the Fifth Amendment and his right to counsel under the Sixth Amendment?

The state declared that Miranda had made his statement voluntarily; no threats or use of force or coercion, no promises of immunity had been made. Arizona claimed that the prisoner understood his legal rights and that the statement he made could be used against him. It was true that Miranda had no attorney at the time he made his statement. But, said the state, he did not specifically request counsel. The Arizona Supreme Court affirmed Miranda's conviction. It held that his constitutional rights had not been violated in obtaining the confession and that it was proper to admit the statement in evidence.

ACTIVITY

CONFLICTING RIGHTS OF THE ACCUSED AND THE POLICE

OBJECTIVES: To provide additional insight into the Miranda rule and its use.

To have students engage in activities that will enable them to investigate various issues centering around the Miranda rule.

To have students consider the problem of the conflict between individual rights and the protection of society.

ACTIVITY: The rights of accused persons and the rights of police officers to be able to conduct investigations as thoroughly as possible are likely to be subjects of ongoing controversy. Students can investigate these issues in several ways:

- a. They could listen to speakers on both sides of the issue: a police officer could present his/her side of the story and an attorney, judge or law school professor could provide another viewpoint.
- b. Students might read one or all of the decisions mentioned in the Teacher Background Information and attempt to trace the development of the Court's reasoning, keeping in mind that Warren was Chief Justice in 1966 and Burger in 1971 and 1974. In addition to, or instead of this, they might make use of the Index to Legal Periodicals to find articles on the decisions and their ramifications.
- c. A very valuable exercise would be for students to conduct community research into the feelings about these decisions in their own community. They could, by using a questionnaire, discover the attitudes of their local police department, local attorneys and judges or other legal experts. Persons working in prisons might also be good sources for determining the attitudes of the community.

STUDENT HANDOUT

(VOLUNTARY STATEMENT)

PAGE 1

DATE _____ PLACE _____ TIME STARTED _____ M.

I, _____, am _____ years old. My date of birth is _____.

I live at _____.

The person to whom I give the following voluntary statement, _____,

having identified and made himself known as a _____,

DULY WARNED AND ADVISED ME, AND I KNOW:

1. That I have the right to remain silent and not make any statement at all, nor incriminate myself in any manner whatsoever.
2. That anything I say can and will be used against me in a court or courts of law for the offense or offenses concerning which this statement is herein made.
3. That I can hire a lawyer of my own choice to be present and advise me before and during this statement.
4. That if I am unable to hire a lawyer I can request and receive appointment of a lawyer by the proper authority, without cost or charge to me, to be present and advise me before and during this statement.
5. That I can refuse to answer any questions or stop giving this statement any time I want to.
6. That no law enforcement officer can prompt me what to say in this statement, nor write it out for me unless I choose for him to do so.

A. No one denied me any of my rights, threatened or mistreated me, either by word or act, to force me to make known the facts in this statement. No one gave, offered or promised me anything whatsoever to make known the facts in this statement, which I give voluntarily of my own free will and accord.

B. I do not want to talk to a lawyer before or during the time I give the following true facts, and I knowingly and purposely waive my right to the advice and presence of a lawyer before and during this statement.

C. I certify that no attempt was made by any law enforcement officer to prompt me what to say, nor was I refused any request that the statement be stopped, nor at anytime during this statement did I request for the presence or advice of a lawyer.

I have read each page of this statement consisting of _____ pages, each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at _____ M. on the _____ day of _____, 19____.

WITNESS: _____

WITNESS: _____

Signature of person giving voluntary statement

STUDENT HANDOUT

MIRANDA WARNING

- (1) You have the right to remain silent.
- (2) Anything you say can and will be used against you in a Court of law.
- (3) You have the right to talk to a lawyer and have him present you while you are being questioned.
- (4) If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one.

WAIVER

After the warning and in order to secure a waiver, the following questions should be asked and an affirmative reply secured to each question:

- (1) Do you understand each of these rights I have explained to you?
- (2) Having these rights in mind, do you wish to talk to us now?

OPTIONAL ACTIVITY

POLICE PROCEDURES

OBJECTIVES: To provide an activity in which students can observe actual situations in which police carry out such functions as arrest and criminal investigation.

To provide an activity in which students' experiences can give them a different perspective on the issue of Miranda rights, their use, and value.

ACTIVITY: Arrange for several students to spend an evening with a police officer in a patrol car. If a large number of students wish to have this experience, ask police departments in near-by communities if they also would be willing to cooperate. This activity should take place *before* the lessons on *Miranda* and Miranda rights, so careful planning is essential.

Have students who participate in this activity fill out the form on the Student Handout. After all of the students have engaged in this activity (and, preferably, after the two lesson-activities before this one have been covered), they should discuss their experiences. Focus particularly on instances in which the police officers used (or should have used) the Miranda Warning. Ask students if this activity has given them a different perspective on the Miranda rights issue. If any students opinions have changed, have them explain how and why this change occurred. Further topics of discussion are suggested by some of the items on the Student Handout.

STUDENT HANDOUT

PARTICIPANT—OBSERVER EVALUATION FORM FOR POLICE PROCEDURES

It is your responsibility to review the actions of both the police officers and the parties involved in your situation. Please attempt to remain objective in your evaluation so that discussions on the results of this survey will be accurate.

The police officers were:

- Overly concerned about the opinions of the other participants
- Overly hostile and opposed to any communication and questioning
- Realistic in their approach
- Unsure of their role

The participants, with the exception of the police officers, were:

- Overly willing to cooperate
- Hostile and aggressive
- Realistic in their operation
- Unsure in their role

Did the police use their *Miranda Warning*? yes no

If yes, did the participants realize the meaning of their rights and utilize them? yes no

Should the *Miranda Rights* be deleted from an arrest? yes no

Should additions be made to this basic warning? yes no

The reactions of the police should have been

The actions of the participants should have been

If I were placed in the role of the participant, I would have

ACTIVITY

THE RIGHT TO COUNSEL: *GIDEON V. WAINWRIGHT*

OBJECTIVES: To provide students with an understanding of the importance of counsel during a criminal proceeding.

To provide students with an understanding of the importance of having lawyers defend indigent persons accused of crimes.

- ACTIVITY:**
1. For a homework assignment the day before this lesson is taught, have students write a brief essay on what they think would happen if they had to defend themselves if they were accused of a crime.
 2. The next day begin the class by having students discuss what they have written. Encourage them to think about the difficulties they would encounter, and ask them to compare this with the difficulties that would be encountered by a poor person who could not afford an attorney.
 3. Ask students to read the Gideon case presented on the Student Handout. They should then outline the case indicating:
 - a. facts
 - b. issues
 - c. decisions they would reach
 - d. reasoning and opinions for reaching this decision
 4. Discuss the case with the students, posing questions that will direct them toward the important issues involved. Some questions which you may want to ask include:
 - Why do you suppose Gideon felt he needed an attorney despite the fact that he had not committed a capital crime?
 - How well did Gideon perform the function of being his own attorney? Cite examples.
 - Do you think that Gideon was able to receive a fair trial? Why?
 - Do you think it is fair that Gideon, a "loser" and an ex-convict, should be appointed a lawyer when other people who have worked hard for their money have to pay? Why?
 - What things, if any, might a lawyer have been able to do in the Gideon case that Gideon was unable to do?
 - Is the defense attorney's competency important to the outcome of a trial?

5. Read and discuss the actual court decision with the class. Some questions to consider:

- How does the court's actual opinion compare with the one which you reached?
- If charged with a criminal offense, would you prefer a court-appointed attorney or one that you had hired? Explain.
- What is a public defender? Does your state have public defenders? If not, what means does it have for providing attorneys for indigent people accused of crimes?
- If poor people were not appointed lawyers, would there be a greater proportion of poorer people convicted than "well-off" people? Why? Now that the court has to appoint a poor person an attorney, is the proportion of poor people who are convicted equal to that of "well-off" people who are convicted? Why or why not?

6. Have a representative from the public defender's office come and talk about the "right to counsel" and pros and cons of having a court-appointed lawyer. Have students prepare some questions in advance that they might like to ask.

If your state does not have public defenders, have a court official come in and talk about the system which your state has for supplying attorneys for the indigent.

7. Read the *Gideon* court decision in the Teacher Background Information to the students.

8. Have students read Right to Counsel Handout and answer questions in writing or orally.

9. Since 1972 attorneys have been provided in all cases that carry a possible jail term -- not just serious ones. Have a student research the case that brought about this Court decision. If he/she has access to a law library, the report can be researched there; if not, the Reader's Guide to Periodicals will be helpful in locating past magazine articles that would cover this topic.

10. Show the film "Justice Under Law: The Gideon Case." Use discussion questions suggested in the film.

STUDENT HANDOUT

GIDEON V. WAINWRIGHT

The Bay Harbor Poolroom in Panama City, Florida, closed down at midnight. The proprietor locked all the doors and windows — carefully, for the neighborhood was a hangout for vagrants, drunks, and petty gamblers. Sometime after dawn, a policeman on a routine patrol discovered that a window of the poolroom had been smashed. Inside, the jukebox and cigarette machine had been broken into, and some beer and wine were missing.

Shortly afterwards, on a tip from a bystander who had “stayed out all night,” police arrested Clarence Earl Gideon. Gideon, who lived in a hotel across the street from the poolroom, was the portrait of a loser: age 51, four times a convict, three times married, drifter, gambler — prematurely white-haired, with a frail, tuberculosis-wracked body. Yet the loser refused, this time, to lose. From the outset, Clarence Gideon steadfastly protested his innocence of the charge of “breaking and entering.” And thus, from these seedy origins, began one of the most celebrated cases in the annals of the Supreme Court.

At his trial, Gideon asked to have the Florida court provide him a lawyer free because he did not have enough money to hire his own. To this the judge replied: “Mr. Gideon, I am sorry, but I cannot appoint counsel to represent you in this case. Under the law of the State of Florida, the only time the court can appoint counsel to represent a defendant is when that person is charged with a capital offense.” The charge against Gideon, “breaking and entering with the intent to commit a misdemeanor,” was not a capital crime — that is, one punishable by death. Gideon protested, “The United States Supreme Court says I am entitled to be represented by counsel.” But his request was denied by the Florida court.

Without a lawyer to represent him and untrained in the law himself, Gideon conducted his own defense about as well as could be expected for a layman. But he was ineffective. He cross-examined the state's main witness, the tipster who said he had seen Gideon inside the poolroom at 5:30 on the morning it was broken into. But Gideon failed to question the tipster thoroughly about what he himself was doing outside the poolroom at that early hour. Nor did he question the man about his reputation, his occupation, or his recent run-in with Gideon. All of these points would have been explored by a skilled attorney. After cross-examining the other witness for the prosecution, the owner of the poolroom, Gideon presented eight witnesses of his own. But his questioning of these witnesses was so rambling that it produced nothing decisively helpful to his defense. In his final argument to the jury, Gideon simply stressed his innocence.

The jury found Clarence Earl Gideon guilty. The judge sentenced him to five years in state prison. Gideon asked the Supreme Court of Florida for a writ of habeas corpus. But the writ was denied.

While in prison, Gideon prepared and submitted a five-page “pauper's petition,” asking the U.S. Supreme Court to review his case. Gideon said his conviction violated the Due Process Clause of the Fourteenth Amendment. To try a poor man for a felony (crime punishable by imprisonment of one year or more) without providing him with a lawyer, said Gideon, was to deprive him of “due process of law.”

TEACHER BACKGROUND INFORMATION

GIDEON V. WAINWRIGHT

COURT DECISION

Reversed.

According to the court, the Constitution demands that a person accused of a serious crime should have a lawyer even if he/she cannot afford to pay for it himself. The Court felt that an individual cannot be assured a fair trial unless he/she has an attorney.

The Court expressed the following opinion:

"Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours."

STUDENT HANDOUT

RIGHT TO COUNSEL



"You have a pretty good case, Mr. Pitkin. How much justice can you afford?"¹

1. Who are the two people in the cartoon? What is the message that the cartoonist is trying to get across?
2. What do you think about the following statement?

There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.

Justice Black

3. How does the statement made by Justice Black relate to both the cartoon and the Gideon case?
4. Do you think that court-appointed attorneys are as good as private attorneys? Present some disadvantages and advantages of having a court-appointed lawyer.

¹Drawing by Handelsman; © 1973 The New Yorker Magazine, Inc.

ACTIVITIES

DUE PROCESS OF LAW

OBJECTIVE: To provide students with an understanding of the concept of due process of law and to familiarize them with procedural safeguards that serve to insure a fair trial.

ACTIVITIES: 1. On the blackboard write the following statement:

No person shall be...deprived of life, liberty, or property, without due process of law...

(Fifth Amendment)

Ask students to write a brief essay on what they think this statement means. Explain to them that the Gideon case provided an example of a right that exists to insure an individual "due process of law." After they have finished, discuss the essays with the class.

2. Have an attorney, prosecutor, or judge in your community come in and talk about the concept of due process of law and safeguards which exist to insure a fair trial. Ask the speaker to specifically address those rights which students have not yet examined in any detail:

- right to a speedy trial
- right to an impartial jury
- right to an impartial judge
- right against self-incrimination
- right to confront and cross-examine witnesses against her/him
- right to call witnesses on his/her behalf
- freedom from double jeopardy

ACTIVITY

DO WE KNOW OUR RIGHTS?

OBJECTIVE: To provide an activity that will make the students aware of the degree to which there exists a lack of awareness about our fundamental rights.

ACTIVITY: Have students take one of the rights guaranteed to the accused by the Constitution, such as the right to have a court appointed attorney, and put it into the form of a petition. The students should then station themselves in various places in their community where many people come by and ask people if they would be willing to sign the petition. They can tell people that the petition will be presented to their congressman, the President, etc.

Once students have completed this activity, have them each discuss their experiences.

- Were people willing to sign the petition?
- What were their reactions to the petition?
- Was anyone aware of the fact that such a right was already protected by the Constitution?
- Who was willing to sign the petition? What reasons did they give for signing it?
- Was anyone against the petition?
- How do you account for people's ignorance of their rights?

ACTIVITY
IF YOU ARE ARRESTED



OBJECTIVES: To provide an activity in which students can review and strengthen their knowledge of rights of the accused as guaranteed by the Constitution.

To provide a service for youth in the community who may be ignorant of their rights.

- ACTIVITY:**
1. When many high school students reach the age of majority they often have no idea of the rights which they are guaranteed as adults. Have students provide a service for these youth by developing a pamphlet entitled *If You Are Arrested*. Such a pamphlet would not only inform the individual of his rights but would also give him important advice on how to handle himself and what he should do if arrested.
 2. Make the pamphlet interesting and attractive with illustrations and colored paper. If the school has a print shop, perhaps the shop teacher would agree to make this activity a joint project for which his students, as well as yours, can receive credit. The Art Department may also wish to join in.
 3. Once the rough draft for the booklet has been completed, have several students go over it with an attorney to make sure that it is both accurate and up-to-date. Another group of students may want to have a police officer examine it to be sure that nothing has been left out.

CONCLUDING VALUE STRATEGY

How Important Are Our Rights?

OBJECTIVE: To have students clarify their own values and those of their community about the rights of the accused.

To have students consider the difficult problems of rights that sometimes are conflicting.

ACTIVITY: Poll the class by asking them to clarify the various priorities by doing a rank order exercise.

1. Rank order (1-5) the following aims of the American legal system
 - to protect the accused from self-incrimination
 - to protect citizens from criminals
 - to guarantee the accused speedy trials
 - to protect the accused from double jeopardy
 - to protect the convicted against "cruel and unusual punishment"
2. Discussion should center around
 - a. which constitutional guarantees are the most important
 - b. the desirability of maintaining *all* of these rights
 - c. the advisability of *balancing* the various aims of the American legal system
3. Possible extension of poll to another class, the school, court personnel, police, the community, etc. If this option is used, postpone the discussion suggested under (2) until the class has conducted the poll and have them report to the class as a whole.

CONCLUDING ACTIVITIES

DISCUSSION QUESTIONS

1. Is it possible that a court decision made today about a particular case may be different from that made a few years from now — even if the laws remain the same?

2. Are court procedures always fair? What role does the court's interpretation of the Constitution play in how a trial is carried out? How and why do these interpretations change over the years? Give some examples.

3. Is the decision the court makes always a "right" one? Is it always a "fair" one?

Discuss the difference between the terms "fair" and "right" as used in this instance. Which, if any, is a more desirable quality of a legal system?

Can what constitutes "fair" today mean something totally different tomorrow? Explain.

4. What is the difference between the role of the judge and that of the jury in a trial? Do they ever perform similar functions? Explain.

Do you think that one would be fairer than the other? Explain.

5. In what ways does the desire and need for effective criminal investigation conflict with constitutional rights of the accused? How do you propose we resolve this conflict?

6. Many people feel that the same laws which protect the rights of the accused also protect the guilty from being convicted and punished. Discuss this controversial issue, providing your own opinions and examples to support your argument. Consider ways of balancing the sometimes conflicting rights of the accused and the victims of crimes.

VOCABULARY REVIEWS

- ACTIVITIES:**
1. The legal terminology charade suggested in Chapter One could be used as a vocabulary review.
 2. The Vocabulary List for this chapter could be used as a basis for a test.

STUDENT HANDOUT

VOCABULARY

Other pertinent terms may be added to this list.

acquittal	impartial
appeal	indictment
arraignment	jurisdiction
bail	misdemeanor
conviction	mistrial
cross-examination	peremptory challenges
defense counsel	plea
double jeopardy	prosecution
due process	reasonable doubt
felony	search and seizure
grand jury	self-incrimination
habeas corpus	sequester
hung jury	verdict

AUTHOR REFERENCES SUGGESTED READINGS



These resources are included in the "Annotated Bibliography" in the Appendix.

- American Bar Association. *Law and the Courts.*
The Rights of Fair Trial and Free Press.
- Bassiouni et. al. *Crimes and Justice.*
- Bragdon. *Pursuit of Justice: An Introduction to Constitutional Rights.*
- Cohen. *Bill of Rights: A Source Book.*
- Creamer. *A Citizen's Guide to Legal Rights.*
- Creamer. *The Law of Arrest, Search and Seizure.*
- Cuban. *You've Been Arrested.*
- Galloway. *The Supreme Court and Rights of the Accused.*
- Goodykoontz. *Law: You, the Police, and Justice.*
- Inbau. *Criminal Law for the Layman: A Guide for Citizen and Student.*
- Lewis. *Gideon's Trumpet.*
- Longaker and Quigley. *High School Law Program Attorney's Source Book.*
- Nelson. *The Torture of Mothers.*
- Newman and O'Brien. *Street Law: A Course in Practical Law.*
- Oliver. *Rights of the Accused.*
- Pearson. *Liberty Under Law: Case Studies of the Basic Principles of the Bill of Rights.*
- Ratcliffe. *Great Cases of the Supreme Court.*
- Vital Issues of the Constitution.*
- Rosengart and Weinheimer. *The Rights of Suspects: The Basic ACLU Guide to a Suspect's Rights.*
- Starr. *The Supreme Court and Contemporary Issues.*

AUDIO/VISUAL MATERIALS



RIGHTS OF THE ACCUSED

These are relevant audio-visual materials. Descriptions are given in the Appendix.

- In Search of Justice
- Trial (The)
- Justice Under Law: The Gideon Case
- Justice and the Law
- Arrest and Seize
- Action Against the Law
- Constitution and Fair Procedure (The)
- Crimes and Justice: Rights of the Accused
- Due Process of Law
- Interrogation and Counsel
- Justice Delayed, Justice Denied
- Marijuana Possession
- Pendulum
- Police Power
- Trial: The City and County of Denver v. Lauren R. Watson
- Under Arrest! Operation Street Encounter
- Fight for Our Rights (The)
- Right to Legal Counsel (The)
- Rights of the Accused
- Need to Protect
- Story of a Trial
- Youth and the Law Series
- Privilege Against Self-Incrimination (The)
- Supreme Court Cases: Series Three – Civil Liberties

CHAPTER FOUR

FREEDOM OF EXPRESSION



FREEDOM OF EXPRESSION

I disapprove of what you say, but will defend your right to say it.

— Voltaire

Free speech is to a great people what winds are to oceans and malarial regions, which waft away the elements of disease and bring new elements of health; and where free speech is stopped, miasma is bred, and death comes fast.

— Henry Ward Beecher

Every man has a right to be heard, but no man has the right to strangle democracy with a single set of vocal chords.

— Adlai E. Stevenson

Better a thousandfold abuse of free speech than denial of free speech. The abuse dies in a day, but the denial stays the life of the people, and entombs the hope of the race.

— Charles Bradlaugh

INTRODUCTION

The term "freedom of expression" encompasses many concepts. This unit addresses such issues as dissent and subversion, obscenity, libel, slander, and symbolic expression. Controversies about pornographic materials, the Vietnam War, Communism, and the Red Scare, demonstrations, etc., are pertinent examples included. Encourage students to examine these issues in order to facilitate their grasp of the subtleties of law. (The *Reader's Guide to Periodicals* is helpful in locating articles on these issues.)

The constitutional limitations on freedom of expression are unclear in many cases. The ambiguity of the Constitution about this right creates its flexibility, and there are great differences in the way the Supreme Court has interpreted the First Amendment throughout the years. There is a great deal of controversy about how, when, and where the right to freedom of expression can and should be circumscribed.

CURRICULUM OBJECTIVES

- To familiarize students with some of the fundamental issues centering around freedom of expression.
- To encourage students to present their own conceptions of what the Constitution allows in the First Amendment with respect to freedom of expression.
- To have students develop an understanding of different aspects of freedom of expression. Major topics are:
 - a. seditious speech
 - b. symbolic expression
 - c. obscenity
 - d. libel/slander
 - e. public and private forums
- To familiarize students with several cases which manifest the present limitations on our right to freedom of expression.

TEACHER BACKGROUND INFORMATION

FREEDOM OF EXPRESSION: HISTORICAL ASPECT¹

The First Amendment provides that "Congress shall make no law...abridging the freedom of speech, of the press, or the right of people peaceably to assemble, and to petition the Government for a redress of grievances." The guarantees of the First Amendment have been fully incorporated into the Fourteenth Amendment, and are thus applicable to the states. *Gitlow v. New York*, 268 U.S. 652 (1952).

Major Goals of Freedom of Expression

Freedom of expression is the cornerstone of representative government. The theory that major governmental decisions are not imposed upon the people by their rulers but that governments (in the language of the Declaration of Independence) "derive their just powers from the consent of the governed," depends upon the opportunity of citizens to be informed. That freedom of expression is a necessary precondition to government by the people is emphasized by the First Amendment's recognition of the right of the people to assemble and petition the government for a redress of grievances, and by recent decisions which have treated the right of groups and individuals to space on the ballot as a right with First Amendment implications. *Williams v. Rhodes*, 393 U.S. 23 (1968).

Freedom of expression of ideas is essential for the search for truth, the improvement of ideas, and individual growth and social change. This theory may have been more a product of Nineteenth Century thought, and not widely held when the Bill of Rights was adopted. It was most cogently stated in John Stuart Mill's essay, *On Liberty* (1859). Mill argued that suppressed opinions would compel rethinking of established opinions and that this was of value even to an individual possessing a "true" belief.

Freedom of expression is an important personal right. The two theories above mentioned have stressed the rights of the listener or the potential audience as the basis for the speaker's freedom. But the first Amendment recognizes freedom of expression, along with freedom of religion, as part of a concept of the individual's right to free intellectual and emotional development. Justice Jackson emphasized this aspect of freedom of expression in his opinion for the Court in *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943), which struck down a law punishing public school students for refusal to participate in compulsory salute of the American flag. Emphasizing "the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control," he concluded: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion...." 319 U.S. at 642.

The First Amendment and Court Opinions:

A Preliminary Word of Caution

Court opinions, particularly United States Supreme Court opinions, are an excellent vehicle for analysis of the basic issues of freedom of speech. They present the generalities about free expression in concrete factual situations, and have produced articulate and forceful opinions by thoughtful judges about the ramifications of our commitment to that freedom. But if freedom of expression is looked at only from the point of view of judicial decisions, there are distortions which should be taken into account.

First, court cases (particularly United States Supreme Court cases) often focus on the most difficult, perplexing problems of the conflict between the values of freedom of expression and other community values. Those cases should not detract from the fact that, for the most part, Americans can say and write

¹Adapted from *High School Law Program Attorney's Source Book*. Copyright, 1973 by Law and American Youth Committee, Young Lawyers Section, American Bar Association. (Permission granted by Jeffrey L. Dow, Esq.)

what, when and where they want, without punishment and without the necessity of receiving official approval in advance.

Second, a constitutional law is not necessarily a wise one, nor are Supreme Court decisions the only guide. Citizens should be concerned with evaluating the performance of legislative bodies in enacting laws, of government officials in enforcing them, and the sense of responsibility and self-restraint exercised by private individuals and agencies (including the media) who exercise them.

Seditious Speech

The control of speech critical of government presents the most central problem of freedom of speech and of the press. Every period of national stress, from colonial times to the present, has produced significant issues concerning the extent of freedom to criticize the government and, in some cases, to advocate its forceful overthrow.

Symbolic Expression

When is conduct free expression? *Cohen v. California*, 403 U.S. 15 (1971) is a recent dramatic example. But there are others, including cases occasioned by the draft, the Vietnam War, and political activism in the schools, which focus on the problem.

In 1966, David O'Brien burned his draft card on a courthouse step as a protest against the draft. He was convicted under a federal law which made it a crime to destroy or mutilate a draft card. The Supreme Court held that O'Brien's conviction did not violate the First Amendment. *United States v. O'Brien*, 391 U.S. 367 (1968). The rationale of Chief Justice Warren's opinion was that the government had legitimate reasons for requiring selective service registrants to carry draft cards, and had reason to prevent their destruction, other than an interest in preventing people from communicating protest by burning their cards.

But what of statutes that prohibit burning or mutilating the American flag? While it is true that burning a flag is conduct, isn't the governmental purpose there to prohibit the conduct because of what that conduct communicates? The constitutionality of flag-burning statutes was argued before the Court in *Street v. New York*, 394 U.S. 576 (1969). A majority of the Court avoided the issue, however, reversing Street's conviction because it rested, in part, upon his having verbally cast contempt upon the flag — something he had a constitutional right to do. But three of the four dissenting Justices (Warren, Black, and Fortas) argued that burning a flag was "conduct" which could constitutionally be punished. (See the Ray Brown activity on perceptions of freedom of speech in this chapter.)

The Conflict Between Freedom of Expression and Other Governmental Interests

In approaching problems of freedom of expression other than those concerned with the danger of speech leading to unlawful conduct, the Supreme Court's approach to the issues has been varied. While it is possible to make useful generalizations about specific cases, it is not possible to generalize about a single overall approach to free speech.

Press Discussion and Criticism of the Judicial Process:

Prior to a trio of Supreme Court decisions in the 1940's, the power of courts to punish publications which were either critical of a court's handling of pending cases, or were otherwise concluded to be detrimental to the administration of justice, had been admitted. In those cases, however, the Court applied the clear and present danger test to the issue of contempt by publication. *Bridges v. California*, 314 U.S. 252 (1941); *Pennekamp v. Florida*, 328 U.S. 331 (1946); *Craig v. Harney*, 331 U.S. 367 (1947). Significantly, in none of those cases was a clear and present danger to the administration of justice found. Because these cases were decided at a time of judicial enthusiasm for the Holmes-Brandeis phrase, they set doctrinal pattern and clear and present danger continues to be the verbal formula for settlement of such cases. *Wood v. Georgia*, 370 U.S. 375 (1962). They seem to suggest that contempt is a proper sanction for newspaper criticism of a judge's conduct in a pending case if the danger to the fair administration of justice is serious enough. The cases indicate, however, that a newsman cannot be punished for contempt in any case, simply because his criticism of a judge's conduct is seen by the judge as distorted or unfair.

A question to which the Supreme Court has not addressed itself is whether direct restraints can be placed on the press to preclude comment on a pending criminal trial which would interfere with the defendant's right to a fair trial. The court has set aside convictions because of prejudicial pretrial publicity.¹

Irvin v. Dowd, 366 U.S. 717 (1961); *Rideau v. Louisiana*, 373 U.S. 723 (1963); *Sheppard v. Maxwell*, 384 U.S. 333, (1966). Judicial "gag orders" directed to the defendant, the police, prosecutors and defense attorneys in pending criminal cases themselves raised issues about freedom of the press and the public's right to know. In an opinion commenting on the denial of Supreme Court to review of a state court decision reversing a contempt conviction of a radio station, Justice Frankfurter suggested, citing English practice, that the "contempt by publication" cases would not prevent punishment of the press itself for disclosures which prejudiced defendants' rights to a fair criminal trial. *Maryland v. Baltimore Radio Show*, 338 U.S. 912 (1950). Most lower courts, however, have held that the principle of those cases precludes extending a "gag order" to the press.

In *National Association for the Advancement of Colored People v. Alabama*, 357 U.S. 449 (1948), the Supreme Court recognized for the first time that members of unpopular organizations had a right to refuse to make public disclosure of their affiliation in that organization. In arguing that Alabama could not compel disclosure of NAACP's membership lists, the Court distinguished an old case which had permitted New York to compel disclosure of Ku Klux Klan activities [*Bryant v. Zimmerman*, 278 U.S. 63 (1928)] on the ground that the Klan had been shown to be engaged in unlawful activities.

Most recently the issue of compelled disclosure has been raised in relation to newsman's privilege. Newsmen have invoked the First Amendment, in those jurisdictions without statutory newsmen's privileges, claiming a right not to disclose confidential sources. The argument has been that, without the credible promises of confidentiality, news sources would dry up, and that, without the ability to gather information, freedom of the press would be a hollow right. The view that the First Amendment grants to newsmen a broad privilege to refuse to disclose their sources was rejected by the Supreme Court in a 5-4 decision, *Branzburg v. Hayes*, 408 U.S. 665 (1972). Among the majority's arguments for rejecting the privilege was that the suggested constitutional privilege should not be absolute. The reporter could be compelled to testify in cases where the state had a compelling need for the information. Thus, sources could not know whether their confidence would be kept. They emphasized, too, the difficulty of defining the limits and exceptions to the privilege. [It should be pointed out that Justice Powell, who joined the majority opinion (and thus was the crucial fifth vote) suggested in a separate concurrence that a newsman's privilege based on the First Amendment might be recognized in an individual case if the information sought bore a vague relationship to the subject of the investigation or if there was no legitimate governmental need for the information.]

¹See *Freedom of the Media*, IPLE manual for extended discussion and activities on the topic of fair trial vs. freedom of the media and for update on Supreme Court decisions on pre-trial publicity.

Debate in Congress over the scope of a proposed federal statutory newsman's privilege has emphasized the dilemma highlighted by the Court's *Branzburg* opinion. Would a flat, unqualified newsman's privilege deny the government access to vitally needed information? On the other hand, would a qualified privilege be so unpredictable that the newsman's source could not know in advance whether the privilege would be respected? Debate has also centered on the issue of the extent to which newsmen's sources dry up if no privilege is granted or if the privilege is significantly limited.

Prior Restraint

Traditional English common law reflected an abhorrence of prior restraints. The issue has not been settled whether freedom of speech and of the press is *limited* to a protection against prior restraint. Traditionally, prior restraints involved a system of administrative licensing. A writer wanting to publish a book needed prior approval from an administrative official. It is all too easy for the administrative official or censor to say no, and the one wishing to speak or publish then carries the burden of going forward to test the lawfulness of the censor's action. This can be contrasted to a criminal prosecution where a prosecutor must bear his burden of making a case in court before official action is taken. It is this evil of the prior restraint system — stopping speech or publication by arbitrary denials of permission and then placing the burden of proof and the burden of initiating court action on the speaker or publisher — to which the later cases refer. And it is this feature of the ancient system of prior restraints which furnishes a clue to identifying modern prior restraints.

Thus, for example, while a state may initiate proceedings to stop distribution of an allegedly obscene book [*Kingsley Books v. Brown*, 354 U.S. 436 (1957)], the prosecution carries the burden of bringing court action and the burden of proof, just as it would in a criminal case. On the other hand, a system in which an official state body sent out lists of objectionable books with threats to prosecute those who sold them was held to be an unconstitutional prior restraint. The Court emphasized that the formalized list of banned books, coupled with threats of prosecution, had been so effective (since booksellers complied) that the necessity of instituting criminal proceedings with their procedural safeguards had been eliminated. *Bantam Books v. Sullivan*, 372 U.S. 58 (1963). The Court has refused to strike down all motion picture licensing ordinances. *Times Film Corp. v. Chicago*, 365 U.S. 43 (1961). But, the Court insisted that the censor, after denying permission to show the film, had to shoulder the burden of going to court to restrain its showing. *Freedman v. Maryland*, 380 U.S. 51 (1965).

Permits for the use of parks and streets for parades, demonstrations, and meetings present a special problem. Because there is the possibility of traffic congestion and the like, and because not all can use the same public facility at once, a system requiring approval in advance is permissible. *Cox v. New Hampshire*, 312 U.S. 569 (1941). The law requiring a permit must, however, be narrowly drawn. Parade permits, for example, must be granted or denied with references to such considerations as traffic congestion, and not because the permit-granting official agrees or disagrees with the parade's message. A law giving the permit-granting official unlimited discretion to grant or to deny permits, or one that directs the official to take into account the content of speeches, meetings and the like, is unconstitutional. *Shuttlesworth v. Birmingham*, 394 U.S. 147 (1969).

Probably, the most celebrated case raising the prior restraint issue is the Pentagon Papers case, *New York Times Co. v. United States*, 403 U.S. 713 (1971). At issue was the legality of injunctions against the *New York Times* and the *Washington Post* which would have prevented them from publishing the contents of a classified study. While the Court's 6-3 decision summarily concluded that the government had not carried its "heavy burden of proof" for the enforcement of a prior restraint, only two of the Justices in the majority — Black and Douglas — clearly stated a position that such injunctive relief was unconstitutional in any and all circumstances. Justices Stewart and White emphasized that, in the particular case, the government had not proved its argument that disclosure would result in irreparable damage to national security.

Time, Place and Manner — Public and Private Forums

The right to speak is subject to time, place, and manner regulation. A student cannot insist on the right to give an anti-war speech in the middle of a mathematics class, a speaker cannot insist on the use of loudspeakers in a quiet hospital zone, and so on. But, to what extent must a municipality make its streets, public parks, public meeting rooms and other public facilities available for speeches, meetings, rallies and demonstrations? It is clear enough that if a city permits some groups to use the parks for meetings and speeches, it cannot arbitrarily deny them to others. *Hague v. C.I.O.*, 307 U.S. 496 (1939). But what if a city were to set aside all its parks as tranquil retreats, and deny all persons the right to use them for meetings and speeches?

There are two views. One emphasizes that public streets and parks have traditionally been a public forum — the poor man's printing press available to those who can't afford access to the mass media or the hiring of private halls. Thus, if a city were to bar the public from using streets for parades and parks for meetings, even if it were to do so fair-handedly, it would still be necessary to balance the citizen's First Amendment rights to access to the public forum against asserted governmental interests. Thus, a city might bar speeches in a particular area in a park, but not in all its parks. A city might bar nighttime parades in residential areas, but could not ban all of its streets to protest parades. This view is most clearly reflected in the handbill cases, which have struck down across-the-board laws prohibiting all distribution of leaflets in public streets. *Schneider v. New Jersey*, 308 U.S. 147 (1939); *Jamison v. Texas*, 318 U.S. 413 (1943). [And see Justice Fortas' opinion, for himself and two other Justices, in *Brown v. Louisiana*, 383 U.S. 131 (1966), involving a peaceful sit-in at a public library.]

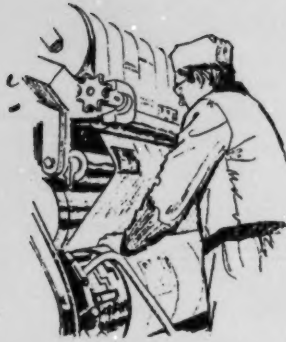
The opposing view is that all time, place and manner restrictions on the use of public property are constitutional as long as they are equitably applied. This view stresses the impossibility of judicial balancing in particular cases of the interests of the government as landowner and interest of individuals in access to the public forum. If a city has only one small public park, may the city reserve it for those who want peace and quiet? If a town has no business district and is entirely residential, may it deny all the permission to parade? This view is most clearly expressed in Justice Black's opinion for a 5-4 Court in *Adderley v. Florida*, 385 U.S. 39 (1966). The defendants were demonstrators convicted of trespass after they refused the sheriff's order to leave the grounds outside the jail. Justice Black's opinion concluded that: "The United States Constitution does not forbid a State to control the use of its own property for its own lawful nondiscriminatory purpose." 385 U.S. at 48.

Do those who wish to speak, distribute handbills, or picket, have a constitutional right of access to private property, which is open to the public? In *Marsh v. Alabama*, 326 U.S. 501 (1946), the trespass conviction of Jehovah's Witnesses who distributed literature in the business block of a company town was reversed. The corporate owner of the town had barred the distribution of all literature. Justice Black's opinion for the Court emphasized that the company town was like a municipality in all respects, except that it was privately owned. The company town thus was bound by the restrictions placed upon a conventional municipality by the First Amendment.

Marsh was significantly extended in the 5-4 decision in *Amalgamated Food Employees v. Logan Valley Plaza*, 391 U.S. 308 (1968), which struck down a state court injunction against peaceful labor picketers in a private shopping center. Justice Marshall's opinion argued that the shopping center was just like the business block of the company town. Justice Black, this time in dissent, argued that the significant factor in *Marsh* had been that the entire town was company owned. Another 5-4 decision limited the *Logan Valley* case. In *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972), the Court held that a state court had improperly forbidden a shopping center from barring the distribution of anti-war leaflets. Justice Powell's opinion distinguished *Logan Valley*, on the ground that in this case the leafleting was unrelated to any activity within the center, and that the leaflets had adequate alternative means of communicating their views.

MOTIVATING QUESTIONS

FREEDOM OF SPEECH



Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

1. According to the above excerpt from the U.S. Constitution (the First Amendment), do we have the freedom to say anything we please? Explain.
2. Do we have the freedom to publish anything we please? Explain.
3. Do you think that there is a difference between what we have the freedom to say and what we have the freedom to publish, or are the limitations the same for both of these rights? Explain.
4. What rights do you think the term "freedom of expression" encompasses?
5. Do we have the right to speak out against the government? Are there any limitations on this right?
6. What role does freedom of expression of ideas play in a democracy? Why is this an essential freedom?

MOTIVATING (or CONCLUDING) ACTIVITY

VALUE SURVEY ON DEMOCRACY AND DISSENT

OBJECTIVES: To motivate students to consider their attitudes toward legal dissent.

To lead students to clarify their values about democracy and dissent.

ACTIVITY: 1. Have students indicate their agreement or disagreement on the following issues. They can either write their answers, orally indicate their agreement or dissent, mark it on a continuum on the blackboard, or actually line up with their peers along one wall of the classroom. (See Chapter One, for further suggestions and variations.)

Questionnaire:

1. A sit-in that does not interfere with the constitutional rights of others.
2. Anti-war protestors chaining themselves to the courthouse walls.
3. Burning draft records.
4. The publication of top secret government papers (Pentagon Papers).
5. Bombing a segregated restaurant.
6. A classroom boycott because a well-liked teacher has been fired.
7. Burning the American flag.
8. Refusal to pay taxes as a protest against the war.

The students should respond to the statements by indicating whether they

1. strongly agree with the action
2. mildly agree
3. mildly disagree
4. strongly disagree
5. no opinion or undecided

2. Record students' responses.

3. Follow through with consideration of these analytical questions:

1. How have you defined the limits of dissent?
2. When does dissent become unjust (illegal)?
3. Why did the class feel that numbers were justifiable and numbers were not?
4. Should dissent stop short of violence?
5. Should the end justify the means?
6. Do you agree or disagree with the results of the questionnaire? Why?
7. In which of the above forms of dissent would you become involved? Why? What would be the consequences?

MOTIVATING (or CONCLUDING) ACTIVITY
FREEDOM OF EXPRESSION OPINION POLL



OBJECTIVES: To introduce students to the topic of freedom of expression by having them indicate how they feel about related issues.

To provide students with a means for comparing their positions on various freedom of expression issues before and after this unit so that they will be aware of their own development.

ACTIVITY: Students should respond individually to the poll on the Student Handout. Responses may be tallied and discussed by the whole class or by small discussion groups. Teacher should refer to Instructions on the next page.

Have students keep a copy of the opinion poll in their journal/scrapbooks so that they can refer to it at the end of the unit to see if their feelings about any of the issues have changed.

A possible option would be to administer the poll to the student body or a segment of the community to which the students have access (their parents, families, the rest of the teachers in the school, or just a random sample of people coming out of a supermarket).

STUDENT HANDOUT

FREEDOM OF EXPRESSION OPINION POLL



Instructions:

Select the response which most closely indicates the way you feel about each item.

- SA = Strongly Agree
AS = Agree Somewhat
DS = Disagree Somewhat
SD = Strongly Disagree

Item:

- _____ 1. In a democracy an individual should be able to say anything he wants to.
- _____ 2. There is never justification for government censorship in any form.
- _____ 3. The people of the United States really believe in freedom of speech.
- _____ 4. Atheists should not be allowed to speak in a public high school.
- _____ 5. Any government censorship should be imposed by the Congress.
- _____ 6. The President should be allowed to impose censorship during a time of war.
- _____ 7. An individual should be allowed to say anything he wishes during a time of war.
- _____ 8. Public libraries should not be allowed to have books that have dirty words or pictures in them.
- _____ 9. A Communist should not be allowed to speak in a high school.
- _____ 10. The President of the U.S. should not allow newspapers to print stories that he thinks are not in the public interest.

STUDENT HANDOUT

- _____ 11. I would rather have my minister, priest, or rabbi rather than my parents determine what I should read.
- _____ 12. Each community should have a citizen's review board to determine what books or magazines are to be sold by area dealers.
- _____ 13. Only religious groups should determine if books, movies, and magazines are obscene or pornographic.
- _____ 14. The Supreme Court of the U.S. should determine what books, magazines, and movies should be banned.
- _____ 15. Only the Congress should have the right to determine what book stores should or should not sell.
- _____ 16. Each community should determine what books, magazines or movies are to be available to the public.
- _____ 17. State legislators should determine if a book, movie, or magazine should be permitted to be distributed in that state.
- _____ 18. Books on Communism should be banned.
- _____ 19. Anti-war demonstrators should not be allowed to demonstrate against the government.
- _____ 20. An individual should not be allowed to give speeches in favor of abortion.
- _____ 21. When the U.S. is at war, newspapers should not be allowed to carry stories critical of our conduct of the war.
- _____ 22. Democratic government is impossible without an informed people.
- _____ 23. The news media are a threat to continued democracy in this country.
- _____ 24. The government should exercise some control over the "liberal" television news commentators.
- _____ 25. Reporters should not be allowed to criticize religion in this country.
- _____ 26. Since the President is elected by all of the people, he alone should determine what is in the best interests of the U.S.
- _____ 27. Reporters should not be permitted to criticize decisions made by the President or Congress.
- _____ 28. Local television stations should monitor network news programs and censor them if they feel that the facts or opinions should not be broadcast to local viewers.
- _____ 29. "R" rated movies shown on television should not be censored.
- _____ 30. Student and parent boards of review should determine what books should not be permitted in school libraries.
- _____ 31. Teachers should be permitted to seize any book or magazine of a student.
- _____ 32. School administrators should determine what books and magazines a teacher is permitted to use in the classroom.
- _____ 33. Black militants should not be allowed to speak at public rallies.
- _____ 34. The Federal Communications Commission should determine the content of programs on the Public Broadcasting System.
- _____ 35. Ku Klux Klan rallies which condemn Blacks, Catholics, and Jews should not be allowed.
- _____ 36. Educational television should not be allowed to carry programs that depict values that are different from those of most Americans.
- _____ 37. Teachers who express unpopular views in the classroom should be fired.
- _____ 38. If the evidence shows clearly that the President is guilty of a criminal act, then the people should not be told of this fact for fear that his authority will be undermined in both this country and abroad.
- _____ 39. The government should be allowed to classify anything it wishes as secret in the interests of national security.
- _____ 40. Most people don't know what's good for them so that the government must see to it that they don't hear or read anything that's dangerous for them to hear or read.

ACTIVITY

HYPOTHETICAL CASE STUDY: FREE SPEECH AND YOUTH

OBJECTIVES:

To provide students with an opportunity to investigate their own concepts of what the Constitution allows in the First Amendment — Freedom of Speech Statement.

To have students become aware of the various interpretations of freedom of speech given by the Supreme Court in American history.

To provide students the basis for further research into the topic of freedom of speech in our society.

INSTRUCTIONS FOR FREE SPEECH AND YOUTH

1. Have students mark each item on the list according to the following designations:

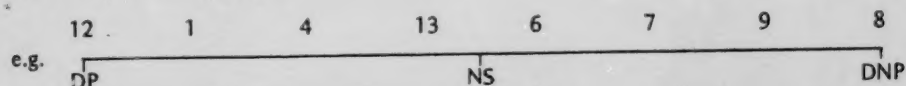
DP — Definitely Protected
 P — Protected
 NS — Not Sure
 NP — Not Protected
 DNP — Definitely Not Protected

They are to mark the items on the basis of whether they believe the activities are or are not protected under the First Amendment guarantee of freedom of expression.

At this point, the teacher can, if desired, conduct an informal show-of-hands tally on the blackboard of individual responses to some of the activities listed for Ray Brown.

e.g.	DP	P	NS	NP	DNP
1	////	//	///	//// //	////
3	////	//	////	///	/
4		//	//	///	///
9	////	///	///	/	
14	//	///	/	///	//// ///

2. After doing this, have students design a continuum along which they list the activities to clarify their perception of freedom of speech.



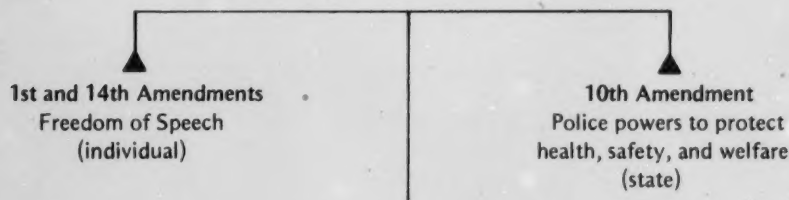
3. Have students break into small groups to compare and contrast their individual responses to the above questions. Students should examine the scope of the First Amendment by discussing in the groups why they consider some items more protected than others.
4. After an appropriate amount of time, assign each group one of the incidents on the list and have the students list why Ray would or would not be protected. Also have them indicate what additional facts about the situation are needed to make a decision. They can add further details if relevant: For instance, on item #2, have the group give an example of the limits to which the leaflet could go. Item #6's group should, if possible, visually depict what the space in the school paper would look like.

Each group should select a representative to speak on its behalf. In the discussion on the items, the following format is recommended:

- a. Presentation by representative of group
- b. Further comments from other members of that group
- c. Dialogue with the rest of the students in the class

The teacher's role is to guide the discussion and interject pertinent information, especially making reference to the "Free Speech and Youth" cases listed in the Teacher Background Information.

5. Upon completion of this discussion, write on the board "Congress shall make no law . . . abridging the freedom of speech" (from the First Amendment). Conduct a discussion of the meaning and interpretation of the phrase as follows:
 - a. What does the phrase mean?
 - b. What is the problem in dealing with the phrase? (Interpretation of law)
 - c. What do you mean by interpretation?
 - d. What is "speech"? Is it pure?
 - e. What are the types of speech? (Pure, symbolic, gestures, actions/conduct, silence, appearance)
 - f. What is "freedom"? (Have them resolve the whole phrase "freedom of speech")
 - g. Does this conflict with other Constitutional rights?
 - h. What does "abridge" mean? Why not use another word?
 - i. "Congress" refers to what? (U.S. Congress — i.e. Federal Government).
 - j. What about *states* abridging your freedom?
6. Write on the board, "No state shall...deprive any person of life, liberty, or property without due process of law" (from the Fourteenth Amendment). Ask the class: Where in this phrase does it indicate that states will not interfere with an individual's right to free speech? ("Liberty" is the key word. The courts have interpreted fundamental freedoms of speech, press, assembly, religion, etc. to be so rooted in our heritage that the word "liberty" expresses the needed language.)
7. This can lead to a discussion of the Constitution as a living document which changes through time. Draw a scale of justice to show the courts must always weigh the rights of an individual versus protection of others.



8. Further thought-provoking discussion:
 - a. Is freedom of speech really the freedom of dissent?
 - b. Why would the Founding Fathers guarantee the support of dissenters?
 - c. Is it the freedom of effective dissent?
(What good is it to make a speech in an empty stadium?)
 - d. In what ways can we insure that dissenters will be heard?
 - e. Did the Founding Fathers intend that the individual have enormous freedoms, or was the Amendment designed to provide citizens with a way to voice their opinions on governmental policies?

STUDENT HANDOUT

FREE SPEECH AND YOUTH

Ray Brown is a senior at Public High School. Ray is black and has been very active in the Afro-American Society during his years at the school which is co-ed and has an evenly balanced racial composition. Ray feels that racism pervades the entire school system and that it is especially evident in the principal of his school. Below is a list of possible methods by which he could express his concern and dissatisfaction.

1. Ray is speaking on the corner near the school calling for the end of racism.
2. Ray, in front of the school, hands out leaflets to the students as they enter the school. The leaflets, in an obscene and violent manner, accuses the school of racism and characterizes the principal as a racist pig.
3. Ray uses a sound truck to express his views in front of the school.
4. Ray pickets in front of the school with a sign saying "End Racism".
5. Ray seeks permission to speak about racism to the student body at a school assembly.
6. Ray buys space in the school newspaper to express his views.
7. Ray gets up at halftime of a basketball game and begins speaking about racism in inter-scholastic athletics.
8. Ray enters the school library and asks for a book on racism in America. When the librarian tells him there is no such book, he sits down and refuses to leave.
9. Ray decides to express his displeasure by refusing to speak at any time during the school day.
10. Ray comes to school dressed like a five-year old declaring, "I will not dress like a man until I am treated like one."
11. Ray enters the school wearing a black armband to protest its racist policies.
12. Ray burns the American flag in front of the school saying, "I will not respect this flag until the U.S. stops its policies of domestic colonialism."
13. Ray throws a rock through a window into the school. On it is written the message "End Racism".
14. When the school committee refuses to replace the principal, initiate black studies, or hire more black personnel, Ray puts a bomb under the building and blows it up.

¹ This activity was prepared for a workshop on law-related education by Norman Gross of the American Bar Association's Committee on Youth Education for Citizenship, and has been adapted for use here with his permission.

TEACHER BACKGROUND INFORMATION

ADDITIONAL CASES RELEVANT TO FREEDOM OF EXPRESSION AND RAY BROWN

Note: The numbers below are keyed to the activities that Ray Brown engages in (see Student Handout on "Free Speech and Youth"). The *Feiner* and *Terminiello* Cases (No. 1 below) are, therefore, ones which might shed light on the question of whether Ray has a constitutional right to deliver a street-corner speech (as described in No. 1 in the list of Ray Brown's activities in the Student Handout).

1. *Feiner v. New York*, 340 U.S. 315 (1951)

Feiner, from a wooden box on a street corner, was addressing a crowd of about 80 people, both black and white. During the speech he made derogatory remarks about several political officials and called upon Blacks to demand their rights.

Terminiello v. City of Chicago, 337 U.S. 1 (1949)

Terminiello, a suspended Catholic priest, addressed a public meeting during which he attacked "Communist Zionistic Jews." A crowd gathered outside the auditorium to protest the meeting.

2. *Talley v. California*, 362 U.S. 60 (1960)

Talley passed out handbills urging readers to boycott certain merchants and businessmen who carried products of manufacturers who will not offer equal employment opportunities to Negroes, Mexicans, and Orientals."

Scoville v. Board of Education of Joliet, 425 F. 2d 10 (1970)

A group of high school students were expelled for selling a literary magazine highly critical of the school.

3. *Kovacs v. Cooper*, 336 U.S. 77 (1949)

A city ordinance made it unlawful for sound trucks emitting "loud and raucous" noises to be operated on the streets.

Wisconsin Student Association v. University of Wisconsin Regents 39 L.S. 2259 (1970)

A state statute made it unlawful for any person to utilize sound-amplifying equipment in a state institution of higher learning without the permission of the administrative head of the institution.

4. *Hughes v. Superior Court of California*, 339 U.S. 460 (1950)

The Progressive Citizens of America picketed a grocery store in support of its demand for more black personnel.

Cox v. Louisiana, 379 U.S. 536 (1965)

Reverend Cox, the leader of a civil rights demonstration, was charged with several offenses including disturbing the peace, obstructing public passages, and picketing before a courthouse.

5. *Kunz v. New York*, 340 U.S. 290 (1951)

Kunz received a permit to hold worship meetings but it was revoked after evidence was presented that he had ridiculed and denounced other religious beliefs at his meetings. His subsequent applications for another permit were denied.

Stacy v. Williams, 306 F. Supp. 963 (1969)

Students questioned the constitutionality of regulations for off-campus speakers at state colleges and universities.

6. *Zucker v. Paritz*, 299 F. Supp. 102 (1969)

Students wanted to place an ad in their school paper to express their opposition to the Vietnam War.

7. *Barker v. Hardway*, 283 F. Supp. 228 (1967)

A group of students demonstrated at a football game against the racist and authoritarian practices at the school.

8. *Brown v. Louisiana*, 383 U.S. 131 (1966)

Blacks were not allowed to use the reading room in a public library. A group of blacks entered the library, asked for a book, and then went to the reading room and refused to leave.

9. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943)

Pupils in public schools refused to participate in the ceremony of saluting the national flag.

10. *Breen v. Kahl*, 419 F. 2d 1034 (1969) and *Richards v. Thurston*, 424 F. 2d 1285 (1970)

Students were suspended because of the length of their hair.

11. *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969)

Several students were suspended for wearing a black armband to school in protest of the Vietnam War in violation of a school regulation forbidding such action.

12. *Street v. New York*, 394 U.S. 576 (1969)

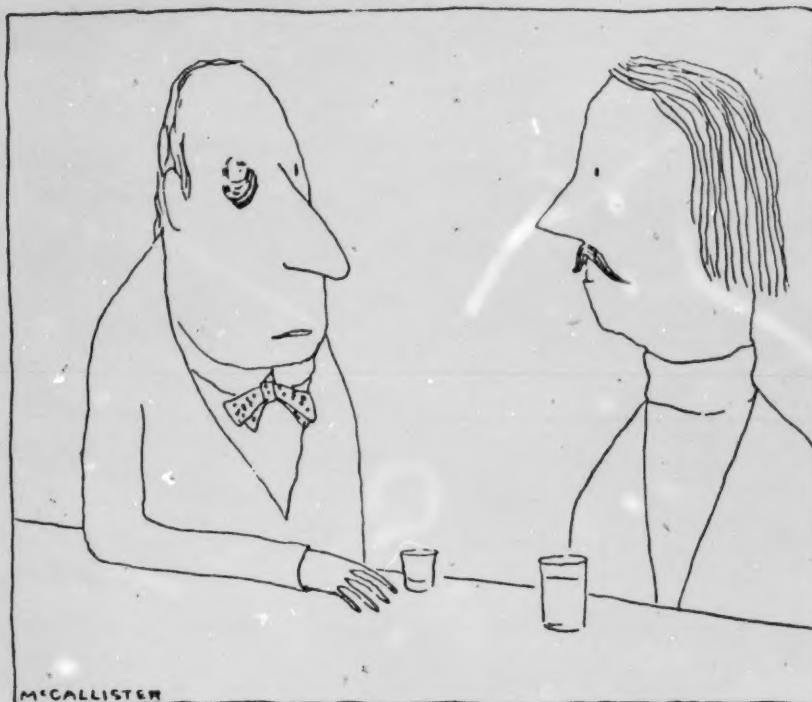
Street, after hearing about the shooting of James Meredith, took an American flag to a corner and burned it.

13. *United States v. O'Brien*, 391 U.S. 367 (1967)

O'Brien burned his draft card in protest of the war in Vietnam.

STUDENT HANDOUT

FREEDOM OF SPEECH



"He defended my right to say it. Then, foolishly, I said it again."¹

Write an essay on the topic of freedom of speech using your interpretations of the statements of these well-known personalities. Compare and contrast their viewpoints, and do not hesitate to include your own opinions.

- 1) *I disapprove of what you say, but will defend your right to say it.*

— Voltaire

- 2) *Free speech is to a great people what winds are to oceans and malarial regions, which waft away the elements of disease and bring new elements of health; and where free speech is stopped, miasma is bred, and death comes fast.*

— Henry Ward Beecher

- 3) *Every man has a right to be heard, but no man has the right to strangle democracy with a single set of vocal chords.*

—Adlai E. Stevenson

- 4) *Better a thousandfold abuse of free speech than denial of free speech. The oppressor dies in a day, but the denial stays in the life of the people, and entombs the hope of the race.*

—Charles Bradlaugh

¹Drawing by McCallister; © 1973 The New Yorker Magazine, Inc.

TEACHER BACKGROUND INFORMATION

THE FIRST AMENDMENT

by William V. Shannon¹



The hardest task in politics is for people to govern themselves. Each individual wants to retain his own freedom and yet effective government requires yielding up enough of that freedom to enable himself and his fellow citizens to achieve their common purposes. Dictatorship is the easy way. Throughout history, most people most of the time have lived under the tyranny of one man or of a small group of men. They have had few rights or none at all. It has not been for them to decide how their country's wealth is spent or who should make their laws. Theirs not to reason why; theirs to keep their mouth shut and obey — or suffer.

Against the background of more than 5,000 years of political repression, the American adventure in individual freedom and limited government that has been underway for about 300 years is a brief affair. Democracy and individual liberty are novel ideas in human history compared to the well-worn truisms that "might makes right" and "nothing counts except who has the power." Those have been the lessons of human experience under the dynasties of ancient China and the Middle East through the military feudalism of the Middle Ages to the relentless totalitarianisms of today. Only a few other societies are attempting the same experiment in self-government in which America is engaged. By contrast, billions of people in eastern Europe and in most of Asia, Africa, and Latin America live under some form of tyranny.

If political freedom is difficult and uncertain today, it seemed an even lonelier and more desperate affair in the 1760's when Americans began to rebel against their king in London, in 1776 when they summoned up the courage to declare their independence, and in 1787 when they finally settled upon their form of government. Most of the leading rebels were well-educated men who were very much aware of the hard road on which they had set out. They faced up to some unpleasant truths about human nature such as that most men and women are selfish and primarily concerned with their own private problems, that they are often lazy when it comes to carrying out the duties of citizens — whether the duty is serving in a public office, on a jury or in the army, or just casting a vote on election day. They knew that people are often astonishingly ignorant about public affairs and that when they do involve themselves, they may act on the basis of prejudice or fear or panic.

¹November 26, 1973, *School Weekly*, by the New York Times Company. Reprinted by permission.

Yet knowing all these gloomy facts about human nature, the American rebel leaders of two hundred years ago still placed their trust in the people. Where else could they place it? A king or a general or a dictator is still just another human being who draws on his pants one leg at a time, and who experiences the same hopes, fears and emotions as everyone else. In planning the structure of government, they had as their objective a regime that would be responsive and accountable to the people, that would be powerful enough to act and yet not so powerful that it would be a standing menace to the liberties of the people, and that would be so constructed that it would be difficult for any single person or faction to seize control. The Federal Government is therefore an elaborate arrangement of checks and balances with power shared among three different branches, each of them autonomous and at the same time interdependent on the other two.

Thomas Jefferson, James Madison and other liberals of that period, however, still worried that the new Constitution did not spell out protection for the rights of the citizens with sufficient clarity. On September 25, 1789, therefore the first Congress approved a block of 10 Amendments to the Constitution. Within two years, nine states had ratified this "Bill of Rights" and it became part of the nation's fundamental charter on December 15, 1791.

The original Constitution is almost entirely a grant of power to the Federal Government and a set of rules for the exercise of that power. The only place the rights of the people are mentioned is Article One, Section 9, a catch-all provision which includes the requirement that arrested persons cannot be deprived of writs of *habeas corpus* except in wartime (Lincoln suspended them during the Civil War) and the further restriction that Congress cannot punish anyone for doing something that was not a crime when he did it by passing an *ex post facto* law.

By contrast, the first 10 Amendments confer no power on the Government and consist entirely of restrictions on the Government. Each of these restrictions was drawn up to meet a specific danger based upon some bad experience that Americans had suffered when they were British colonists or based on some bad precedent in Europe that the authors of the Amendments had read about in their history books. Experience over the past 182 years has shown that the most important of these Amendments are the First, Fourth, Fifth, Sixth and Eighth.

The First Amendment states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The religion section of this Amendment is a complex subject in itself to which we can give only brief attention. In 1791, virtually every other country in the world except Switzerland had a religion officially recognized by the government as the true and preferred religion. ...

The First Amendment says, "Congress shall make no law...abridging the freedom of speech or of the press." Does that literally mean *no law*? Hugo L. Black, Associate Justice of the Supreme Court from 1937 to 1971, repeatedly argued that the literal construction was exactly what the Amendment meant. Most of his colleagues through most of the nation's history, however, have upheld criminal statutes concerning libel and slander by the press and by individuals. Even that great libertarian, Associate Justice Oliver Wendell Holmes, wrote in one of his opinions: "No man has the right to shout 'Fire!' in a crowded theater."

Justice Black, however, won his greatest victory in a case involving a suit by the city officials of Montgomery, Alabama, against *The New York Times* in which those officials claimed that Harrison Salisbury's articles about that city's racial troubles in 1960 had libeled them. The Supreme Court held that public officials could not be libeled in stories describing their official duties unless they could prove that the "facts" were false and the reporters knew them to be false before they printed them.

The great enemy of free speech and a free press, however, is neither libel nor slander. It is "sedition." Broadly speaking, sedition means spoken or written words that tend to disturb the public peace or to threaten the Government. The emphasis is on exhortation to act rather than on the acts themselves. The words, whether written or spoken, are judged to be inflammatory but not of such a conspiratorial character as to justify a charge of treason. In the British experience, it was not necessary to prove that the defendant wished to provoke violence or insurrection. It was only necessary for the Government to show that the words could be so construed by a reasonable person. As one English legal commentator has observed, sedition is "the intentional publication, without lawful excuse or justification, of written blame of any public man, or of the law, or of any institution established by the law."

Many conservative Americans who grumble at what they read in their newspapers or watch on evening news programs on television are really in favor of reviving the laws against sedition, even though they may not frame their thoughts in those terms. Sedition, however, has an unhappy history in American jurisprudence. It is commonly said that in a war, truth is the first casualty. American experience suggests that it has to be a war with an ideological component. The United States has had four experiences with the concept of sedition in widely separated time periods. Yet the U.S. also passed a century and a fifth from 1798 to 1917 during which it fought the War of 1812, the Mexican War, the Civil War, and the Spanish-American War, none of which had an ideological dimension, without resort to laws against sedition.

In 1798, however, the United States was drifting into an undeclared naval war with revolutionary France. Although the U.S. was itself a young revolutionary country, Americans were shocked by what they regarded as the terrorism and the excesses of the French Revolution. When the French Government requested passports for a group of French scientists from the Institute of France under Du Pont de Nemours to visit the U.S. "with a view of improving and extending the sciences," President John Adams wrote back: "We have too many French philosophers already, and I really begin to think, or rather to suspect, that learned academies . . . have disorganized the world, and are incompatible with social disorder."

Congress that same year passed the Alien and Sedition Acts. The Alien Act empowered the President to deport foreigners by executive decree without any judicial proceedings. The Sedition Act, based on British common law, provided that speech or writing against the President or Congress, if published with intent to defame or to arouse resistance to law or to aid any foreign nation, would be deemed legally seditious. Fortunately, the law had a life of only two years and was not renewed. But before it had run its course, the Adams Administration used it to harass several unfriendly newspaper editors and politicians. One editor was fined for writing that he hoped the wad of the cannon fired in a Presidential salute might hit President Adams squarely in the seat of his pants. Another editor was sent to jail for writing that the President had an "unbounded thirst for ridiculous pomp, foolish adulation, and a selfish avarice." Two men in Massachusetts were arrested for putting up a "liberty pole" with the inscription: "No Stamp Act, no Sedition, no Alien Bills, no Land Tax; downfall to tyrants in America, peace and retirement to the President." (Mr. Nixon would probably regard the last comment as rather mild.)

When Thomas Jefferson, one of the leading sponsors of the Bill of Rights, became President in 1801, he pardoned those convicted under the Sedition Act and Congress remitted their fines.

Sedition remained a dead letter until the United States entered World War I in April, 1917. It is difficult now to reconstruct the emotions that Americans of that generation experienced against the German Kaiser Wilhelm II and the German General Staff. The American war effort was a "crusade" to make the world safe for democracy" and to smash Prussian militarism. The entire German-American subculture in this country was ostracized and driven underground, even such innocent pastimes as the celebration of Steuben Day and the drinking of hearty German beer. The German language, once widely taught in American high schools, was proscribed, and sauerkraut was renamed "liberty cabbage."

In this frantic atmosphere, Congress on June 15, 1917, passed an Espionage Act that included broad provisions against sedition. Any written or spoken words intended to incite resistance to the U.S. war effort or to promote the success of its enemies were to be punished with fines up to \$10,000 and prison sentences up to 20 years. Even worse, many states passed their own sedition statutes. About 200 cases were prosecuted under the Federal law, and nearly 10 times as many under various state laws. Since seditious writings and utterances are usually expressions of opinion rather than statements of fact, it is almost impossible to define sedition carefully in a law. Everything depends on the interpretation of the judge and the jury.

Zechariah Chafee, Jr., in *Free Speech in the United States*, his classic history of the speech section of the First Amendment, wrote: "It became criminal to advocate heavier taxation instead of bond issues, to state that conscription was unconstitutional though the Supreme Court had not yet held it valid, . . . to urge that a referendum should have preceded our declaration of war, to say that war was contrary to the teachings of Christ.

"Men have been punished for criticizing the Red Cross and the Y.M.C.A., while under the Minnesota Espionage Act it has been held a crime to discourage women from knitting by the remark, 'No soldier ever sees these socks.' "

Since the Espionage Act was related to support of the military effort during wartime, prosecutions under it lapsed when formal peace between the U.S. and Germany was finally restored by a resolution of Congress in 1921. But in 1940, with the outbreak of World War II, Congress passed the Smith Act that made it a crime "to organize or help to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any government in the United States by force or violence; or to be or become a member of, or affiliate with, any such society, group, or assembly of persons, knowing the purposes thereof."

During the war, a sizable group of American Fascists were prosecuted under this law, but the trial dragged on for months, the judge died, and the case was eventually abandoned. The real importance of the Smith Act emerged with rising anti-Communist sentiment as the cold war developed. In 1949, the Government successfully prosecuted the eleven first-string leaders of the American Communist Party on the grounds that they sought to "teach and advocate the overthrow and destruction" of the government. The Supreme Court upheld their conviction.

When the United States the following year entered the Korean War, Congress tried to improve upon the Smith Act by passing the McCarran Internal Security Act. It required "subversive groups" to register with a Subversive Activities Control Board and required every organization so designated by the Board to label its mailings as subversive propaganda. This law never got anywhere. The Supreme Court in a variety of cases held that one or another of its provisions violated the First Amendment. By implication, the Smith Act also passed into a gray twilight zone of legality. Without ever holding that act unconstitutional, the Supreme Court shifted the stress from the teaching, advocacy, and encouraging of opinions to overt acts that could be shown to have some practical consequences.

When the United States in 1965 became actively involved in the Vietnam War and protests against the war rapidly increased, the Government did not seek new legislation. It also refrained from deploying those shaky weapons, the Smith Act and the McCarran Act. Instead, the Government in prosecuting antiwar activists fell back upon a conspiracy statute. Thus, in the case of Dr. Benjamin Spöck, the Government tried to show that he and others had conspired together to encourage young men to violate the Selective Service Act. But conspiracies are notoriously difficult to prove, and the Johnson and Nixon administrations encountered a long series of defeats in seeking convictions against anti-war radicals that would stand up on appeal.

In past wars, the press except for a few fringe journals has reflected majority sentiment in favor of victory. It therefore has supported Government policy without coercion. That was not true, however, of the Vietnam War. Influential newspapers with large circulations opposed the war policy almost from the first and with intensifying vigor. The Johnson Administration suffered this criticism more or less stoically. But the Nixon Administration counter-attacked on three different fronts.

When *The New York Times* and subsequently other newspapers began printing the Pentagon Papers, a huge, secret history of American involvement in Vietnam prepared by the Defense Department, the Justice Department obtained an injunction to prevent publication. On appeal, the Supreme Court overturned this injunction by a 6-to-3-vote and allowed the publication to resume. But during the several days that the case was being rushed to the Supreme Court, the Government for the first time in American history had successfully imposed prior restraint on what a newspaper could publish. The traditional American practice had been that newspapers published first and were sued or punished later — for libel or sedition or any other cause. Only in dictatorships are news stories and editorials submitted to a political censor for approval before publication. Since a shift of two votes on the nine-man Supreme Court would have established this doctrine of prior restraint as the law of the land, the Pentagon Papers case is both a landmark victory for freedom of the press — and a scary near-defeat.

Under the direction of Attorney General John N. Mitchell, Justice Department prosecutors embarked on a much more extensive campaign than ever before or subpoenaing the notes of newspaper reporters and the unused tapes of television and radio newsmen. Earl Caldwell, a reporter for *The Times* (*The New York Times*), carried his case to the Supreme Court and lost. . .

The Justice Department's pressure opened upon a controversy within the news profession. Some journalists believe that reporters should have absolute, unchallengeable immunity from having to testify or turn over research materials to a grand jury or a trial jury. Other journalists believe they have the same duty as all other citizens to give their testimony in a court of law if justice cannot be served in any other fashion. Their position is the pragmatic one that the Government should not call upon them to compromise their sources and their independence except in rare cases of the highest importance and when other witnesses are lacking.

The Nixon Administration's third front in its counterattack on newsmen was the propaganda battle. Using former Vice President Spiro T. Agnew as its spearhead, the White House tried persistently to discredit the press and television in the mind of the public. Agnew denounced the television commentators for offering "instant analysis" of Presidential speeches. He assailed *The Times*, *The Washington Post* and other papers as "nattering nabobs of negativism." On one occasion, he asserted that unnamed papers were not fit "to line the bottom of a birdcage."

How valid is this kind of criticism? Certainly, the press every day makes errors of commission and omission. It needs more institutional self-criticism and more criticism from responsible outsiders. But readers and viewers have to weigh criticism from high government officials with considerable skepticism. A modern government exercises great power, and great power should always be subjected to careful scrutiny. Rather than being unfair to persons in high places, most of the press is too timid and lax in examining their backgrounds and policies. Since radio and television stations are dependent upon a Presidentially-appointed commission to renew their licenses, they usually avoid tangling with the administration in power whenever possible. Most newspapers are not much more venturesome.

The people are in much more danger from an overly powerful government left unchecked by a complacent press than they are from a government weakened, if that were possible, by excessive press criticism. As Jefferson wisely observed, "Were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate to prefer the latter."

The Watergate scandals have demonstrated the importance of a vigilant and independent press in restraining a corrupt and potentially tyrannical administration. *The Washington Post* and *The Times*, and to a lesser extent a few other newspapers such as *The Boston Globe* and *The Los Angeles Times*, courageously dug out the story of the Nixon Administration's burglarizing and wiretapping of the Democratic National Committee's headquarters and of its subsequent attempts to cover up the truth about its involvement by perjured testimony, payments of "hush money," promises of clemency, and exploitation of the Central Intelligence Agency and the Federal Bureau of Investigation.

As the ramifications of Watergate unfolded, two other vital provisions of the Bill of Rights came into focus. The final words of the First Amendment are that Congress shall make no law abridging "the right of the people peaceably to assemble and to petition the Government for redress of grievances." The anti-Vietnam War protesters had a right to assemble and to petition the President and members of Congress for a redress of the grievances they felt about the war, so long as they assembled, petitioned, and protested in a peaceful manner. The Nixon Administration undermined that precious right by encouraging Secret Service men, local police, and members of veterans groups to "strong arm" protesters and keep them both out of sight and out of earshot of the President. The Administration also hired undercover agents to foment demonstrations that would be violent or use obscene language and thereby to discredit all hostile demonstrations.

In 1970, President Nixon secretly approved a plan to use burglaries, wiretapping, tampering with mail and other illegal techniques against domestic radicals who, in his judgment, posed an internal security threat. J. Edgar Hoover, then the head of the F.B.I., feared the plan would become known and cause his agency grave embarrassment. As a result of this protest, Mr. Nixon rescinded the plan after five days. But the following year, he set up a secret investigating staff at the White House and gave them a mandate to engage in these same activities. Because one of their tasks was to plug "leaks" of information to unauthorized persons, they came to be known as "the plumbers."

In September, 1971, several "plumbers" broke into the office of Dr. Lewis Fielding, a Los Angeles psychiatrist, to see if they could find the file on one of his patients, Daniel Ellsberg, the man who had turned the Pentagon Papers over to the press. Some of the same "plumbers" were arrested nine months later while burglarizing the files of the Democratic headquarters in the Watergate building.

Burglary would be a crime under state law whoever committed it and regardless of what he stole. But when agents of the Government break into the homes and offices of ordinary citizens and steal their private papers, they are committing exactly the crimes that the authors of the Bill of Rights had in mind when they wrote the Fourth Amendment: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...." For hundreds of years, tyrannical rulers have crushed the freedom of their citizens by sending armed men to break into their homes and search for any incriminating evidence they might find. That is why the Fourth Amendment specifically forbids that practice and specifies that even a policeman may not enter anyone's home unless he has a warrant "particularly describing the place to be searched, and the persons or things to be seized."

Technology has evolved grave threats to the concept of privacy set out in the Fourth Amendment. It is possible not only to wiretap telephone conversations but also to conceal electronic "bugs" that will pick up every conversation in a room and transmit it as much as a quarter-mile away. With the help of closed-circuit television, it is possible to monitor an individual's comings and goings on an around-the-clock basis. The "Big Brother" society against which George Orwell warned in his prophetic novel, *1984*, is already technically feasible. As dissidents in Russia have learned, it is much harder to be a rebel now than it was in the days of the Czars or than it was for Thomas Jefferson, Sam Adams, and the other leaders of the revolution against King George III. Because technology has so increased the efficiency of a police-minded government, tyranny once it comes is almost impossible to overthrow.

So the hard question recurs: Can Americans govern themselves and retain their individual liberties? Small, homogeneous democracies like Denmark or Sweden or Switzerland have an easier time of it. But the United States spans a whole continent and encompasses regional differences and rivalries. The more than 200 million Americans are of widely varying religions, races, ethnic backgrounds and life experiences.

Diversity is a source of strength but it also affords opportunities for demagogues to play upon prejudice and fear. Jefferson and many of his contemporaries believed that the structure of government they had fashioned could survive only if America remained a nation of small farmers and small townsmen where most families owned their own property and could share in the burdens and satisfactions of citizenship on a roughly equal basis with their neighbors. Today, most Americans live in cities and suburbs and seem tied to one another by little more than the beltways they drive and the common television programs they watch. Is the sense of community in America today strong enough to belie Jefferson's fears?

Every society as big and complicated as the United States has political phonies, cynical demagogues, and unscrupulous men of ambition who care more about themselves and their own power than they do about the people's liberties. In times of racial strife or economic crisis or profound political disillusionment, these dangerous adventurers find their opportunities. The Presidency with its vast executive powers is the natural objective of such adventurers. If the American venture in freedom and self-government is to survive, all the nation's political and social institutions — the Congress, the courts, the state and local governments, the political parties, the press, the churches, the universities — have to be vigorous and alert.

The freedoms set forth in the First Amendment and the other parts of the Bill of Rights depend upon power being balanced and checked by opposing power of different kinds and upon the restraints of law. Most of all, they depend upon an informed people who, like the farmers who fought at Lexington and Concord, can shake aside complacency and private concerns and take up the burdens of citizenship.

FREEDOM OF EXPRESSION

RELEVANT TERMINOLOGY

OBJECTIVES: To familiarize students with different manifestations of freedom of expression.

To introduce students to some terms which refer to different modes of expression and are important in describing the limits on our right to freedom of expression.

To have students test their knowledge of terms used to describe various means of exercising the right to freedom of expression.

ACTIVITY:— This may be used as a springboard for other activities related to the topic of freedom of expression. The exercise can be conducted orally or in the form of a homework assignment, in-class writing exercise, or a library research activity. Ask students to define, guess the meaning, or give examples of the terms on the list on the Student Handout.

One lively variation would be to conduct a legal terminology charade by insisting that students act out the *meaning* of the words rather than the sounds as is often done in charades. Refer to Chapter One, Vocabulary Section for further instructions.

Refer to the Glossary for precise definitions.

STUDENT HANDOUT

VOCABULARY

Other pertinent terms may be added to this list.

defamation	public disturbance
demonstrations	sedition speech
dissent	slander
libel	subversion
obscenity	symbolic expression
picket	trespassing

ACTIVITY

FEINER V. NEW YORK

OBJECTIVES: To provide students with a case study that will stimulate the discussion of:

- a. the necessary limitations of free speech in a democratic society
- b. the various responsibilities of the speaker(s), audience, and authorities (e.g., police) in the case of free speech and the consequences of that speech
- c. Whether or not criticism of the government or its officials should be allowed, and, if so, to what extent.

To familiarize students with the 3 major legal ways of controlling freedom of speech.

ACTIVITY:

1. Have the students read the Student Handout. Then discuss the case with them, focusing on the above topics, as well as asking them such questions as:

- What do you think the Supreme Court's decision will be?
- What would your decision be on this case? Why?

2. The Teacher Background Information is an outline of the three major legal forms of limitation of freedom of speech. Discuss these with the class. Then show them the film entitled *Freedom to Speak: People of New York vs. Irving Feiner* (see Appendix). If this is not possible, then this activity can be based on the case as it appears on the Student Handout.

After either the film has been shown or the class has read the Feiner case, have them cite examples from the case of the use of each of the three major legal controls on freedom of expression.

3. Present the class with the court's decision on the Feiner case (see Teacher Background Information). Stimulate a class discussion which includes some of these questions:

- Why did the court decide as it did?
- Do you agree with their decision?
- Do you think that the court would have decided the same way today? Why?
- When do you think that the government should be allowed to interfere with free speech?
- What role should the police play in a case such as that of Feiner's?
- Do you think that the possibility that many people may disagree with the speaker and that this is likely to result in violence is sufficient reason to stop someone from speaking?
- What would you have done if you were one of the policemen at the scene of Feiner's speech?

TEACHER BACKGROUND INFORMATION

FREEDOM OF SPEECH – INTERNAL ORDER

The legal controls designed to protect society take three major forms:

- I. In the first form, the government attempts to prevent in advance communication or other conduct which it fears may lead to public disorder.

- A. Devices

1. Licensing or permit systems
 2. Court injunctions

- B. Considerations

1. Doctrine against prior restraint (censorship) – clear and present danger test
 2. Due process requirements
 - a. Law must be definite, specific, and clear
 - b. Cannot contain undue breadth of restriction
 - c. Cannot give individual unlimited discretion

- II. In the second form, the government tries to halt communication while it is still in progress (e.g., where the police order a speaker to desist or a crowd to disperse).

- III. In the third form, the government prosecutes communication which has already taken place.

- A. Grounds used for II and III

1. Unlawful assembly
 2. Inciting to riot
 3. Breach of the peace
 4. Disorderly conduct

- B. Considerations

1. Due process requirements
 2. Was the law reasonable (were there other alternatives which would not infringe upon freedom of speech)?
 3. Was the law designed to stifle the free exchange of ideas?
 4. Was the enforcement of the law aimed at stifling freedom of speech?

- a. Key factors

- 1) Time
 - 2) Place
 - 3) Manner

- b. Other factors

- 1) Speaker
 - 2) Subject of speech
 - 3) Number of demonstrators and observers
 - 4) Composition of crowd
 - 5) Noise Level

5. Doctrine of equal protection

TEACHER BACKGROUND INFORMATION

FEINER V. NEW YORK

COURT DECISION

Affirmed.

According to the court, Feiner was arrested and convicted, not because of the content of the speech, but because the police officers had sufficient reason to believe that the crowd's reaction to his speech represented a "clear and present danger" of disorder.

Chief Justice Vinson delivered the opinion of the court:

"We are not faced here with blind condonation by a state court of arbitrary police action. Petitioner was accorded a full, fair trial. The trial judge heard testimony supporting and contradicting the judgment of the police officers that a clear danger of disorder was threatened. After weighing this contradictory evidence, the trial judge reached the conclusion that the police officers were justified in taking action to prevent a breach of the peace. The exercise of the police officers' proper discretionary power to prevent a breach of the peace was thus approved by the trial court and later by two courts on review. The courts below recognized petitioner's right to hold a street meeting at this locality, to make derogatory remarks concerning public officials and the American Legion. They found that the officers in making the arrest were motivated solely by a proper concern for the preservation of order and protection of the general welfare, and that there was no evidence which could lend color to a claim that the acts of the police were a cover for suppression of petitioner's views and opinions. Petitioner was thus neither arrested nor convicted for the making or the content of his speech. Rather, it was the reaction which it actually engendered. . . .

" . . . It is one thing to say that the police cannot be used as an instrument for the suppression of unpopular views, and another to say that, when as here the speaker passes the bounds of argument or persuasion and undertakes incitement to riot, they are powerless to prevent a breach of the peace. Nor in this case can we condemn the considered judgment of three New York courts approving the means which the police, faced with a crisis, used in the exercise of their power and duty to preserve peace and order. The findings of the state courts as to the existing situation and the imminence of greater disorder coupled with petitioner's deliberate defiance of the police officers convince us that we should not reverse this conviction in the name of free speech."

Dissenting opinions

Justice Black:

"The record before us convinces me that petitioner, a young college student, has been sentenced to the penitentiary for the unpopular views he expressed. . . . The police of course have power to prevent breaches of the peace. But if, in the name of preserving order, they ever can interfere with a lawful public speaker, they first must make all reasonable efforts to protect him. Here the policemen did not even pretend to try to protect petitioner. According to the

officers' testimony, the crowd was restless but there is no showing of any attempt to quiet it; pedestrians were forced to walk into the street, but there was no effort to clear a path on the sidewalk; one person threatened to assault petitioner but the officers did nothing to discourage this when even a word might have sufficed. Their duty was to protect petitioner's right to talk, even to the extent of arresting the man who threatened to interfere. Instead, they shirked that duty and acted only to suppress the right to speak. . . ."

Justice Douglas (with whom Justice Minton agreed):

"A speaker may not, of course, incite a riot any more than he may incite a breach of the peace by the use of "fighting words." See Chaplinsky v. New Hampshire, 315 U.S. 568. But this record shows no such extremes. It shows an unsympathetic audience and the threat of one man to haul the speaker from the stage. It is against that kind of threat that speakers need police protection. If they do not receive it and instead the police throw their weight on the side of those who would break up the meetings, the police become the new censors of speech. . . ."

STUDENT HANDOUT

FEINER V. NEW YORK



On an evening in March, 1949, a college student named Feiner was addressing a group of people on a street corner in Syracuse, New York. Two police officers arrived to find a crowd of seventy-five to eighty people filling the sidewalk and spreading out into the street. Using a loudspeaker system and speaking to the crowd in what was described as a "loud high-pitched voice," made several derogatory remarks about the President of the United States, the Mayor of Syracuse, and the American Legion. The purpose of his speech was to publicize a political meeting that was to take place later that evening. However, he was reported to have referred to President Truman as a "bum" and to have made statements such as, "The Negroes don't have equal rights; they should rise up in arms and fight for their rights."

There was some pushing and shoving in the audience, and one man turned to the police officers and said, "If you don't get that son of a bitch off, I will go over and get him off there myself." The policemen asked Feiner to stop speaking, but when he repeatedly refused, they arrested him. He was prosecuted and convicted of disorderly conduct, a misdemeanor, and sentenced to thirty days in the county penitentiary.

The case was appealed to the U.S. Supreme Court as a violation of Feiner's right to free expression.

ACTIVITY

OBSCENITIES CASE STUDY: *ROTH V. UNITED STATES*

OBJECTIVES: To provide students with a knowledge of the meaning of speech and obscenity.

To examine a case study which focuses on this issue.

ACTIVITY: The case for this section, *Roth v. United States*, deals with the publication of pornographic literature.

Have the students read and discuss the case on the "Student Handout." Ask them to describe the major issues involved and then to predict what the Supreme Court's decision on the case would be.

Other questions may include:

1. What do you think the trial judge meant by the term "highly prudish"? What did he consider to be the test of whether or not a work is "obscene, lewd, or lascivious"?
2. Do you think the First Amendment should protect any reference to sex in a book, magazine, etc.? Why? Should the Amendment distinguish between sex and obscenity? If so, explain both why and how.
3. How would *you* define "obscene, lewd, and lascivious"? Define some situations in which you feel these standards *ought* to be applied. Give examples of some situations in which you feel the standards should *not* apply.
4. Do you agree with the trial judge's conception of the test that would determine the legality of a work which has sexual references? If not, what type of test would you propose?

TEACHER BACKGROUND INFORMATION

ROTH V. UNITED STATES COURT DECISION

Affirmed.

In the eyes of the Court, an important question which this case raised was whether or not obscenity is within the area of constitutionally protected speech or press. Ultimately, they felt it was not.

Justice Brennan delivered the opinion of the court:

The dispositive question is whether obscenity is utterance within the area of protected speech and press. Although this is the first time the question has been squarely presented to this Court, either under the First Amendment or under the Fourteenth Amendment, expressions found in numerous opinions indicate that this Court has always assumed that obscenity is not protected by the freedoms of speech and press....

The guaranties of freedom of expression in effect in 10 of the 14 States which by 1792 had ratified the Constitution, gave no absolute protection for every utterance. Thirteen of the 14 States provided for the prosecution of libel and all of those States made either blasphemy or profanity, or both, statutory crimes. As early as 1712, Massachusetts made it criminal to publish "any filthy, obscene, or profane song, pamphlet, libel or mock sermon" in imitation or mimicking of religious services....

*In light of this history, it is apparent that the unconditional phrasing of the First Amendment was not intended to protect every utterance. This phrasing did not prevent this Court from concluding that libelous utterances are not within the area of constitutionally protected speech. *Beauharnais v. Illinois*, 343 U.S. 250, 266. At the time of the adoption of the First Amendment, obscenity law was not as fully developed as libel law, but there is sufficiently contemporaneous evidence to show that obscenity, too, was outside the protection intended for speech and press....*

....We hold that obscenity is not within the area of constitutionally protected speech or press."

STUDENT HANDOUT

ROTH V. UNITED STATES



Samuel Roth ran a mail-order business in New York. He published and sold books, magazines, and photographs. These, however, were not ordinary, front-counter bookstore items; they were packed with lurid sex. Roth mailed smutty circulars to lure potential customers. Some of these advertisements were answered by government agents.

Samuel Roth was arrested and charged with violating an 1872 federal law against sending pornography through the mails. The statute declared unmailable "every obscene, lewd, lascivious, or filthy book, pamphlet, picture, paper, letter, writing, or publication of an indecent character."

At Roth's trial in a federal district court, the judge instructed the jury:

1. "The words 'obscene, lewd and lascivious' as used in the law signify that form of immorality which has relation to sexual impurity and has a tendency to excite lustful thoughts."

2. "The test is not whether it would arouse sexual desires or sexual impure thoughts in those [making up a part] of the community, the young, the immature or the highly prudish — or would leave another [part], the scientific or highly educated or the so-called worldly-wise...unmoved....The test in each case is the effect of the book, picture, or publication considered as a whole, not upon any particular class, but upon all those whom it is likely to reach. In other words, you determine its impact upon the average person in the community."

After the jury found Roth guilty, the judge sentenced him to five years in prison and over \$5,000 in fines. The case eventually came before the U.S. Supreme Court, where Roth claimed that the 1872 federal law violated the First Amendment to the U.S. Constitution. He included among his arguments:

1. That the statute punished the stirring up of merely impure sexual *thoughts*; and that there was no proof that such books, magazines, and photos would lead to anti-social conduct.

2. That the statute was too vague — the words "obscene, lewd and lascivious" were not definite enough to clearly tell the difference between a legal publication and an illegal one. And that, said Roth, was necessary to permit him a fair trial.

ACTIVITY

CASE STUDY OF LIBEL: *NEW YORK TIMES V. SULLIVAN*

OBJECTIVE: To provide the student with an understanding of defamation or libel.

ACTIVITY: The students should read the case study and, through discussion, attempt to answer the following questions:

1. What would the difference be between your taking space in the local paper to say derogatory things about your next door neighbor, and criticizing the mayor of the city for neglecting some of his duties?
2. Is it necessary to prove that every statement in a signed editorial or advertisement be true before the paper prints it? What would the effect of such a policy be on the freedom of the press?
3. When he assumed public office, did Sullivan relinquish any of his rights?
4. What are the advantages of a totally free press? What recent occurrences have illustrated the effect the press can have on government?

TEACHER BACKGROUND INFORMATION

NEW YORK TIMES V. SULLIVAN COURT DECISION

Reversed.

The Court held that a public official could recover damages for a defamatory falsehood *only* if the libelous material was deliberately false — made with malice — or if the statement was made with indifference to the possibility of its falsehood. They did not feel that this was the case in the instance of *New York Times v. Sullivan*.

Furthermore, the Court emphasized the need for citizens in our society to have the privilege of criticizing the government and public officials, pointing to the "profound national commitment that debate on public issues should be uninhibited, robust and wide open, and that may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."

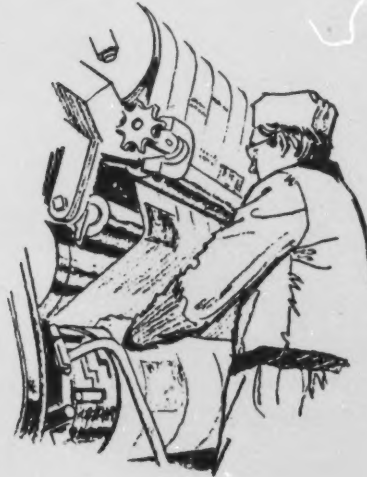
The Court concluded its statement by saying:

As to the Times, we similarly conclude that the facts do not support a finding of actual malice. . . . We think the evidence against the Times supports at most a finding of negligence in failing to discover the misstatements, and is constitutionally insufficient to show the recklessness that is required for a finding of actual malice. . . .

We also think the evidence was constitutionally defective in another respect: It was incapable of supporting the jury's finding that the allegedly libelous statements were made "of and concerning" respondent. Respondent relies on the words of the advertisement and the testimony of six witnesses to establish a connection between it and himself. . . .

STUDENT HANDOUT

NEW YORK TIMES COMPANY V. SULLIVAN



On March 29, 1960, the *New York Times* carried a full page advertisement headlined "Heed Their Rising Voices," an appeal for public understanding and support of the blacks' problems in the South. It described specific acts of discrimination and physical violence against blacks by Montgomery, Alabama, police and by other "Southern violators." It also appealed for money to support the non-violent student movement, the struggle for the right to vote, and to help pay for the legal defense of Dr. Martin Luther King, who was facing perjury charges in Montgomery.

The opening statement was:

As the whole world knows by now, thousands of Negro students are engaged in widespread non-violent demonstrations in positive affirmation of the right to live in human dignity as guaranteed by the U.S. Constitution and the Bill of Rights.

The advertisement went on to charge that:

[I]n their efforts to uphold these guarantees, they are being met by an unprecedented wave of terror by those who would deny and negate that document which the whole world looks upon as setting the pattern for modern freedom....

STUDENT HANDOUT

The specific events described to back up these charges included:

In Montgomery, Alabama, after students sang, "My Country 'Tis of Thee" on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission.

Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home, almost killing his wife and child. They have assaulted his person. They have arrested him seven times — for "speeding," "loitering," and similar "offenses." And now they have charged him with "perjury" — a felony under which they could imprison him for ten years.

Although other charges were made and grievances aired in the advertisement, no specific names of the "Southern violators," policemen, or other officials were given.

The cost of the advertisement was approximately \$4,800 and it was published by the *Times* under an order from a New York advertising agency acting for the signatory Committee. A letter from A. Philip Randolph, Chairman of the Committee, accompanied the copy, certifying that the persons whose names appeared in the ad had all given their permission. Mr. Randolph was known to the *Times'* Advertising Acceptability Department as a responsible person. With the exception of Randolph, however, none of twenty persons whose names had appeared on the bottom of the ad had given their permission.

The *Times'* staff made no other attempt to verify the accuracy of the advertisement or the authorization for the signers' names. The ad was inaccurate in some of its charges.

- *The black students on the Alabama campus had sung the National Anthem, not "My Country 'Tis of Thee;"*
- *The campus dining hall had never been padlocked;*
- *Although police had been sent to the campus, they never had completely surrounded or "ringed" it.*

L.B. Sullivan, Commissioner of Police of Montgomery, said that the bombings of King's home had taken place before he had become Commissioner. Sullivan also said that he knew two people who associated him with the ad. One of them had told Sullivan that he "would not want to be associated with anyone who had been a party to such things as stated in the ad." The other had said that "one would not re-employ Sullivan if he believed that he allowed the Police Department to do the things that the paper said."

The circulation of the *New York Times* the day the advertisement was carried was about 650,000. Of these approximately 394 copies were circulated in Alabama and about 35 copies were distributed in Montgomery.

OPTIONAL ACTIVITY
CLARIFYING THE CONCEPTS OF
DEFAMATION AND LIBEL

1. Divide class into 4 groups (A,B,C,D).
2. Ask each group to write 2 related statements about a person or a public official that would hypothetically be printed, one which would be libelous, one not.
3. Pair any 2 groups (A&B, C&D) and have them judge whether the statements of the other group constitute defamation or libel.
4. Instruct each group to focus on the following considerations (which may be written on the blackboard for constant reference):
 - a. Whether actual malice was *intended*
 - b. Whether any misstatement is intentional
 - c. Whether they feel the statement *ought* to be considered *legally* defaming or libelous, regardless of what the correct legal position would be.

TEACHER BACKGROUND INFORMATION

VERDICT ON DISSENT

by Joel F. Henning

"The life of the law," said Justice Oliver Wendell Holmes, "has not been logic; it has been experience." Law is not determined as much by reason, Holmes added, as by "the felt necessities of the time...even the prejudices which judges share with their fellow men."

In the history of the United States, there has been no political experience more bitterly disputed than our great military involvement in Vietnam — except, perhaps, the Civil War. An examination of the major political trials it had engendered, therefore, tells us much about how the U.S. legal system responds to the conflict between the "felt necessities" of government, on the one hand, and of citizens, on the other.

Thus far, four major political trials have arisen directly out of protests against the Vietnam War. The first three are commonly known as the trials of Dr. Spock, the Chicago Seven, and the Harrisburg Seven. The fourth, in which Daniel Ellsberg and Anthony Russo, Jr. have been indicted for publishing the Pentagon Papers, is now in process and, therefore, not discussed here.¹ The first three cases are more or less closed and involve a number of common elements that make them a useful set to examine together.

In the Spock case, Dr. Benjamin Spock; the Rev. William Sloane Coffin, Jr., chaplain of Yale University; Marcus Raskin, a former Kennedy administration official and co-director of the Institute for Policy Studies; Mitchell Goodman, a New York writer; and Michael Ferber, a 23-year-old Harvard University student were indicted for "a continuing conspiracy to aid, abet and counsel violations of the Selective Service law."

In the Chicago case, David Dellinger, a pacifist since before World War II; Rennie Davis and Tom Hayden, nonviolent anti-war activists; Abbie Hoffman and Jerry Rubin, organizers of the relatively nonpolitical but culturally "revolutionary" Yippies; John Froines and Lee Weiner, college teachers; and Bobby Seale, an official of the Black Panther Party, were indicted for having undertaken to "combine, conspire, confederate and agree together...to travel in interstate commerce with the intent to incite, organize, promote, encourage, participate in and carry on a riot...and thereafter to perform overt acts for the purpose of inciting a riot," in Chicago during the 1968 Democratic Convention. Seale's case was severed from the others during the trial and ultimately dropped, reducing the original Chicago Eight to Seven.

In the Harrisburg Seven case, the Reverends Phillip Berrigan, Joseph Wenderoth, and Neil McLaughlin, Roman Catholic priests; Sister Elizabeth McAlister, a Roman Catholic nun; Anthony and Mary Scoblick, an inactive priest and former nun, now husband and wife; and Dr. Eqbal Ahmad, a Pakistani scholar, were indicted for conspiring to "maliciously damage and destroy, by means of explosives, personal and real property owned and possessed by the United States" and "to willfully seize, confine, inveigle, decoy, kidnap, abduct and carry away in interstate commerce a person (Henry Kissinger) for ransom and reward...."

Father Berrigan and Sister McAlister also were charged with unlawfully smuggling letters in and out of the federal prison where Father Berrigan was serving a term for an earlier act of protest against the war. A second indictment, in which the kidnaping charge was minimized and draft board raids given a prominent role, superseded the first. An eighth defendant, Theodore Glick, was severed from the case before trial.

¹ This selection was printed on February 18, 1973 in *The Chicago Sunday Sun-Times*, Viewpoint.

All but Raskin were convicted in the Spock case. However, Spock and Ferber were freed outright by the U.S. Court of Appeals on a finding of insufficient evidence of conspiracy; the cases against Goodman and Mr. Coffin were remanded for retrial on a finding that the trial judge's instructions to the jury were defective. The government has not sought to retry them.

All the Chicago Seven defendants were acquitted of the conspiracy charges. The U.S. Court of Appeals reversed their convictions on the substantive charge of crossing state lines with intent to incite riot, ruling prejudicial conduct on the part of the judge and prosecutors. The defendants appealed the constitutionality of the statute under which they were convicted, and the government has announced plans not to retry them.

In Harrisburg, the jury failed to reach a verdict on the conspiracy charges, and the government since has dropped the case. The only convictions, those of Father Berrigan and Sister McAlister for smuggling letters, are on appeal.

Nature of Political Crimes

What is a political crime? How is it different from other crimes? Very simply, a political crime is one in which the defendants, rightly or wrongly, believe that the government is in error while they are on the side of justice.

For example, William Penn was indicted in England in 1670 for conspiring to incite a riot. In fact, he merely had preached a Quaker sermon in the street, having been forbidden to do so in the Quaker meeting house under a law prohibiting "unauthorized preaching." Penn believed in the rightness of his cause. This trial led to his imprisonment — and that of the jury that acquitted him — for contempt of court. Seeking freedom from such intolerance, he emigrated to the United States.

Many Americans have been jailed for income-tax evasion. Most such cases are not political. But when Henry David Thoreau was tried for failure to pay his taxes, he defended himself by arguing that the government was wrong in collecting them. When Ralph Waldo Emerson visited Thoreau in jail he asked, "Henry, what are you doing in here?" Thoreau responded, "Ralph, what are you doing out there?"

Similarly, the defendants in the political cases arising out of the Vietnam War believed that the United States was morally and perhaps legally wrong to be involved militarily in Vietnam. Clergymen who believe deeply in the immorality of the war have been defendants in two of the cases under discussion. All defendants agree with those lawyers and legislators who have made arguments against the legality of the war.

Prof. Telford Taylor of Columbia University's Law School, formerly U.S. chief counsel at the Nuremberg war-crimes trials after World War II, has written a book suggesting that the Vietnam War may violate the international laws we established in trying German officials after World War II.

Others, including many U.S. senators, contend that our Constitution has been violated because Congress never has declared war on North Vietnam. Three Presidents, however, saw fit to commit our military power in Vietnam, supported by their own moral conviction as well as legal briefs in defense of their actions. Whether Penn, Thoreau and the critics of our policy in Vietnam were right or wrong, their belief in the rightness of their actions rendered their cases political.

Being political cases, however, does not necessarily mean that they should receive special treatment. Former Attorney General Ramsey Clark, a deeply moral man, was in charge of the Justice Department when the Spock case was tried, but he agreed to be a defense witness in the Chicago Seven case and was a principal defense attorney in the Harrisburg case. He believed himself on the right side in each case, saying:

"One could believe that Spock was morally right — as I may have, in fact — and still believe that the laws had to be enforced. As the nation's chief law-enforcement officer, I had the duty to prosecute Spock and the others when, in my judgment, the facts showed a violation of the law (aiding and abetting violations of the Selective Service Act). If you don't enforce the law, it becomes shapeless."

In the Chicago and Harrisburg cases, Clark believed not only in the moral rightness of the defendants' causes but in their legal innocence as well. Agreeing with the conclusion of a presidential commission that the police largely incited the riots, he urged that only police be indicted in Chicago. In Harrisburg, he said, "There was no conspiracy. There was no agreement. There was no capacity. They could not do it."

Apparently Clark would have had no more problem with Thoreau than he did with Spock. "It never seemed wrong to me," he said, "that Thoreau...went to jail. That was his point. He so disagreed with the government that he would sacrifice freedom itself to show his concern."

What does the moral man who respects the law do? Were the men who violated the law during the Boston Tea Party right or wrong? What of all the revolutionaries of 1776?

Abraham Lincoln went further than Clark when he asserted that law could and should give way to "the ultimate justice of the people." Would he have prosecuted Spock? Not on the basis of the above-quoted statement. However, later in his career, President Lincoln suspended the writ of habeas corpus, drastically diminishing the rights of Civil War protesters.

These are troubling questions that have no simple answers, but they are important questions to keep in mind when examining the cases under discussion.

How Political Cases Are Born

The political nature of these cases is demonstrated by their unusual origins. Such cases are not typically provoked by a particular criminal act committed by the defendants but by a decision made in government that it is time to move against political dissidents. Each of the three cases under discussion was prosecuted against the advice of knowledgeable government attorneys. All three indictments were apparently motivated by the need to assuage the feelings of powerful government officials.

John Van De Kamp, head of the special Justice Department unit that brought the Spock indictment, is quoted by Jessica Mitford in her book, *The Trial of Dr. Spock*, as saying, "It was done to provide a graceful way out for Gen. (Lewis) Hershey," who had just been publicly rebuked for attempting to abuse the Selective Service system to discourage lawful anti-war protests.

The Chicago Seven indictments were brought by a grand jury over which Mayor Daley's close friend and political ally, the chief judge of the U.S. District Court in Chicago, exercised rather extraordinary influence in opposition to the judgment of the attorney general of the United States. The conclusion seems inescapable that the case was brought to redeem Daley's reputation.

The Harrisburg indictment was precipitated by premature allegations made before Congress by J. Edgar Hoover, director of the Federal Bureau of Investigation, concerning the alleged kidnaping scheme and the plot to blow up government heating tunnels.

Several members of Congress demanded that Hoover retract his statement or bring indictments. Less than a month later, the hastily prepared indictment was handed down. Later it had to be withdrawn and replaced by a more craftsmanlike document, which nevertheless proved inadequate to the task of substantiating Hoover's charges.

Another Conspiracy Concept

Another common feature of political trials is use of the law of conspiracy. All these cases were principally cast as crimes of conspiracy. According to the trial judge in the Spock case, "a conspiracy may be defined as a breathing together, a plan, or agreeing together." This seems rather a broad and ineffable definition of a crime, and so it has seemed to many jurists.

Supreme Court Justice Robert H. Jackson called conspiracy an "elastic, sprawling and pervasive offense...so vague that it almost defies definition." The great defense lawyer, Clarence Darrow, was less charitable in his definition. He called it a "worn-out piece of tyranny, this dragnet for compassing the imprisonment and death of men whom the ruling class does not like."

One needn't do anything to be guilty of conspiracy. As Darrow put it, if one boy steals candy, he is guilty of a misdemeanor. If two boys plan to steal candy but don't do it, they are guilty of conspiracy — a felony.

The concept of conspiracy entered English law in the 14th Century to protect citizens against false accusations. It was used widely in England and the United States against trade unions and more recently against combinations of businessmen in restraint of trade.

Conspiracy law is justified by the argument that an individual who thinks about robbing a bank is likely to think better of it, but two or more persons who agree to rob a bank are more likely to do it. The danger of conspiracy law is that the government can punish defendants for a substantive crime without proving that a substantive crime was committed. It need only establish the conspiracy.

Thus, Julius and Ethel Rosenberg were electrocuted not for stealing atomic secrets, for which the evidence was insufficient, but for conspiring to do so. During the height of the cold war, Communist defendants were convicted of conspiracy to advocate the overthrow of the government. Hence they were two steps away from doing anything. As Robert O'Rourke, in his book, *The Harrisburg Seven & the New Catholic Left*, describes the Harrisburg indictment, "The conspiracy charge they are left with is as faint from the deeds it implies as a Xerox of a Xerox of a Xerox."

The defendants to a conspiracy charge need not even know each other, but each member of a conspiracy becomes liable for all the statements and actions of every other member. It is sufficient if A is proved to know B, who knows C, and they are engaged in common activity. In all three cases under discussion, some of the defendants had to be introduced to one another for the first time by their attorneys. Lack of the defendants' ability to agree on trial tactics or even luncheon menus was apparent in all these cases and belied their ability to conspire effectively.

Another extraordinary factor of conspiracy prosecution is that all the government need prove are entirely innocent circumstantial acts, such as phone calls or chance encounters. It need not prove that any inherently wrongful acts were committed.

The extremes to which a government so disposed could take conspiracy law is provided by the Spock trial. One of the "overt acts" alleged against the defendants was a newspaper ad urging all to resist the Vietnam War, signed by 28,000 persons. All signers could have been indicted.

The prosecutor offered evidence against Spock and Raskin to the effect that they had applauded speeches by one another and by the other defendants. Ms. Mitford asked the prosecutor if that meant that all who have applauded such speeches at peace rallies are technically guilty of conspiracy.

"That is substantially correct," answered the prosecutor.

Beyond its legal reach, the concept of conspiracy has psychological implications for a government attempting to gain political advantage over dissidents. When the acts of dissidents are politically offensive but not, perhaps, criminal, it is difficult to convince the public of the defendants' guilt. Conspiracy charges, however, carry the implication that the defendants are making plans and carrying them out in secret.

Even if the government loses its case in court, the charges themselves suggest that the defendants are guilty but cunningly able to conceal their guilt in the dark recesses of their conspiracy. The American people believe deeply in the presumption of innocence until guilt is proven. But a charge of conspiracy can cloud that presumption by raising doubts about the openness and honesty of the defendants.

Free speech distinguishes our democracy from the totalitarian regimes of China and the Soviet Union. But when opposition to Vietnam became loud and insistent, Rep. F. Edward Hebert (D-La.) spoke for many who felt threatened when he said:

"Let's forget the First Amendment. When is the Justice Department going to get hep and do something to eliminate this rat-infested area? At least the effort can be made."

The Spock defendants were accused in the main of making statements and speeches (although some of them collected draft cards). With insignificant exceptions, evidence of the Chicago conspiracy involved only speeches and writings. No evidence concerning the Kissinger kidnapping and the bombings was ever presented in Harrisburg that went beyond desultory dinner-table conversation and incidental gossip in love letters.

Of course, the right of free speech is not absolute. One cannot falsely yell fire in a crowded theater. Such speech amounts to criminal action.

It may be that the Spock defendants could have been found guilty in a case charging violation of the law that prohibits aiding, abetting and counseling violations against the Selective Service system. The government could argue that speeches urging young men to refuse induction come close enough to yelling fire in the theater. But the government attempted to make no such case. Instead, the law of conspiracy was used. Judge Frank M. Coffin said in concurring in the decision reversing the Spock convictions that "to apply conspiracy doctrine to these cases is, in my view, ...not consistent with First Amendment principles."

Why, then, did the government do so? Judge Coffin answered this question when he said, "There is the...danger that the casting of the net has scared away many whom the government has no right to catch." The selection of many non-radical, non-young, middle-class professionals and clergymen to be defendants in all three cases seemed to be an effort to chill the desire of others to speak out against the war. The prosecutor at the Spock trial made this threat manifest. When anti-war activist Prof. Noam Chomsky of the Massachusetts Institute of Technology was introduced during the trial, the prosecutor said, "He is not sitting here at the bar as a defendant...today!"

Political trials have a tendency to demean those involved — on both sides — perhaps because political and moral issues are being tortured into a legal framework. Surely, no party to the Chicago Seven case — the judge, the government prosecutors, the defendants — enhanced their respective reputations in the course of that trial. The specter of Seale, bound and gagged, will not quickly disappear from the U.S. consciousness.

The System Prevails

The outcome of these cases suggests that, with some injustice and much pain and suffering, our legal system does well — even in political cases.

All the convictions have been reversed on appeal in the Spock and Chicago Seven cases. In Chicago and Harrisburg, the jury failed to convict on any counts of conspiracy. This result was especially dramatic because the Harrisburg defendants did not call any witnesses on their own behalf. The Chicago defendants considered the same strategy but ultimately put on a large number of witnesses. Little meaningful testimony was allowed to go before the jury. In view of this and the dubious level of effectiveness achieved by the Chicago defense counsel, they might have fared better had they, too, put on no defense at all.

In Chicago, the U.S. Court of Appeals roundly condemned the government and Judge Julius J. Hoffman for too obviously displaying their political prejudices.

"The demeanor of the judge and the prosecutors would require reversal," the appellate court said, if other errors did not....Judge Hoffman's deprecatory and often antagonistic attitude toward the defense is evident in the record from the very beginning."

The same court earlier had reversed the judges's citations of contempt for the loud and intemperate reactions of the defendants to the hostility of the other side. These contempt citations are to be retried by another judge.

While the cost in time and money to the defendants in all three cases was enormous, they were free to solicit support among their fellow citizens. Ironically, they raised money for their defense by continuing to speak out against the war.

Political acts must not be immune from prosecution when they are criminal, as in the case of Thoreau's tax evasion, and especially so when they are violent, as in the case of the bombing at the University of Wisconsin. But when mere speech is involved, we must not "forget the First Amendment."

We would do well to heed Justice Hugo Black who wrote that "under our system of government, the remedy for (dissenting ideas) must be...education and contrary argument. If that remedy is not sufficient, the only meaning of free speech must be that the revolutionary ideas will be allowed to prevail."

ACTIVITY

DEMOCRACY AND DISSENT

OBJECTIVE: To introduce students to the topic of dissent, its definition, and its limits.

- ACTIVITY:**
1. The Teaching Background Information: "Verdict on Dissent," provides an interesting perspective. Some of the issues raised by Henning may be raised with the class.
 2. Discuss the general meaning of dissent. Ask the students to provide examples.
 3. The Student Handout is self-explanatory.

Students can refer to the copy of the Constitution in their manual to answer the questions or the excerpts in the Appendix may be reproduced for them.

The issues and questions raised by this assignment should be discussed.

4. After students have completed the opinion questionnaire in Part 2 of the Student Handout, discuss their answers. Ask some of the following questions:
 1. Why did the class feel that numbers.....were justifiable and numbers.....were not?
 2. How have you defined the limits of dissent?
 3. When does dissent become illegal?
 4. Should dissent stop short of violence?
 5. In which of the above forms of dissent would you become involved? Why? Are any of them illegal? What would be the consequences?
 6. Ask students who seem to be in the minority in terms of their responses to a particular item to explain why they responded that way.
 7. At the end of the discussion, ask students if any of them would change their answers now that they have discussed the issues and heard the opinions and reasoning of their classmates.

STUDENT HANDOUT

DEMOCRACY AND DISSENT

1. What is dissent?

- Look over your copy of the U.S. Constitution. Can you find any reference to dissent in it? Where?
- Is the Constitution clear as to when dissent is constitutional and when it is not?
- Does dissent have a place in a democratic society? Why?
- What do you feel should be the limits of dissent in our society?
- Why do the limits of dissent differ from country to country? Give some examples of how they differ.

2. Read over each of the statements below. Place a (✓) by each item in order to indicate whether you:

- strongly agree with the action.
- mildly agree
- mildly disagree
- strongly disagree
- no opinion or undecided

- A sit-in that does not interfere with the constitutional rights of others.
- Anti-war protesters chaining themselves to the courthouse walls.
- Burning draft records.
- The publication of top secret government papers (Pentagon papers).
- Bombing a segregated restaurant.
- A classroom boycott because a well-liked teacher has been fired.
- Burning the American flag.
- Refusal to pay taxes as a protest against the war.

SA MA MD SD NO
1 2 3 4 5

ACTIVITY

MOCK TRIAL: *TINKER V. DES MOINES*¹

OBJECTIVES: To provide the student with an opportunity to experience first hand involvement with the issues of symbolic expression.

To acquaint students with the functioning of the Federal court system, in particular, the process of appeal.

ACTIVITY: This activity should precede any discussion of the actual Supreme Court opinion which is given in the Teacher Background Information.

Facts of the case, full directions, and role assignments follow in Teacher Background Information and the Student Handout.

¹This has been adapted from a simulation developed by Edward T. Munley, a regional teacher coordinator in the IPLE program.

TEACHER BACKGROUND INFORMATION

EXCERPTS FROM THE DECISION OF THE SUPREME COURT IN TINKER V. DES MOINES¹

Note: These opinions should only be read to the students after the simulation game has been played and those playing the parts of the Supreme Court justices have rendered their opinions. As part of the "debriefing" these can be introduced for purposes of further clarification of the issues involved in the case.

From the Majority Opinion:

Noting that "it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," the Court per Fortas, J., reversed: "The problem presented by the present case does not relate to regulation of the length of skirts or the type of clothing, to hair style or deportment ..."

"It does not concern aggressive, disruptive action or even group demonstrations. Our problem involves direct, primary First Amendment rights akin to 'pure speech.'"

"The school officials banned and sought to punish petitioners for a silent, passive, expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners. There is here no evidence whatever of petitioners' interference, actual or nascent, with the school's work or of collision with the rights of other students to be secure and to be let alone. Accordingly, this case does not concern speech or action that intrudes upon the work of the school or the rights of other students."

"Only a few of the 18,000 students in the school system wore the black armbands. Only five students were suspended for wearing them. There is no indication that the work of the school or any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises."

"In our system, undifferentiated fear or apprehension of disturbance (the District Court's basis for sustaining the school authorities' action) is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any words spoken, in class, in the lunchroom or on the campus, that deviates from the views of another person, may start an argument or cause a disturbance. But our Constitution says we must take this risk ..."

"It is also relevant that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance. The record shows that students in some of the schools wore buttons relating to national political campaigns, and some even wore the Iron Cross, traditionally a symbol of nazism. The order prohibiting the wearing of armbands did not extend to these. Instead, a particular symbol — black armbands worn to exhibit opposition to this Nation's involvement in Vietnam — was singled out for prohibition. Clearly, the prohibition of expression of one particular opinion, at least without

¹(From Lockhart, William, et al., *The American Constitution*, St. Paul, Minnesota, West Publishing Company, 1970, pp. 531-2).

evidence that it is necessary to avoid material and substantial interference with school work or discipline, is not constitutionally permissible."

"If a regulation were adopted by school officials forbidding discussion of the Vietnam conflict, or the expression by any student or opposition to it anywhere on school property except as part of a prescribed classroom exercise, it would be obvious that the regulation would violate the constitutional rights of students, at least if it could not be justified by a showing that the students' activities would materially and substantially disrupt the work and discipline of the school."

"In the circumstances of the present case, the prohibition of the silent, passive 'witness of the armbands', as one of the children called it, is no less offensive to the constitution's guaranties."

Justices Stewart and White submitted brief concurrences.

From the Dissenting Opinions:

In the course of a lengthy dissent, in which he scored the "myth" that "any person has a constitutional right to say what he pleases, where he pleases, and when he pleases," Justice Black observed: "While the absence of obscene or boisterous and loud disorder perhaps justifies the Court's statement that the few armband students did not actually 'disrupt' the classwork, I think the record overwhelmingly shows that the armbands did exactly what the elected school officials and principals foresaw it would, that is, took the students' minds off their classwork and diverted them to thoughts about the highly emotional subject of the Vietnam War."

In a separate dissent, Justice Harlan maintained that "school officials should be accorded the widest authority in maintaining discipline and good order in their institutions" and thus "would, in cases like this, cast upon those complaining the burden of showing that a particular school measure was motivated by other than legitimate school concerns — for example, a desire to prohibit the expression of an unpopular point of view, while permitting expression of the dominant opinion." In the instant case, he found "nothing which impugns the good faith of respondents in promulgating the armband regulation."

Questions for further consideration in class discussion:

1. What if many students, rather than only a handful had made hostile comments to the students wearing armbands?
2. What if the wearing of armbands had led to violence on school grounds?
3. Should either of the above situations have any bearing on the outcome of the Court decision?
4. Compare this case to *Feiner v. New York*. What major similarities do you note? If *Tinker v. Des Moines* had preceded the *Feiner* case, do you think the justices would have decided differently in the *Feiner* case? Why?

Use the reasoning of the Supreme Court in *Tinker v. Des Moines* to support an argument in favor of reversing the court decision in *Feiner v. New York*.

5. What type(s) of "expression" was being exercised in the *Tinker* case? In the *Feiner* case?
6. What role do dissenters play in our society?

TEACHER INSTRUCTIONS

TINKER MOCK TRIAL

DIRECTIONS AND ROLE ASSIGNMENTS

Assignment I: Designation of Roles

One or two lawyers for Tinker	Andrew Burgess	Justice John M. Harlan
One or two lawyers for School Board	Leonard Carr	Justice William Brennan
John F. Tinker	Leonard Tinker	Justice Potter Stewart
Christopher Eckhardt	Court Officer	Justice Byron White
Mary Beth Tinker	Chief Justice Earl Warren	Justice Abe Fortas
Dennis Pointer	Justice Hugo Black	Justice Thurgood Marshall
Aaron McBride	Justice William O. Douglas	

The teacher should assume the role of District Court Judge Stephenson and render the decision 258 F. Supp. 971 (1966). He/she may wish to locate this decision in the law library and copy it to hand out to students as the basis for appeal.

Roles should be assigned to students one week in advance of the beginning of the simulation. Allow sufficient time for them to research their roles and at least one day of small group discussions to alleviate any problems. Have students refer to information on their handouts.

Assignment II: Conferences

The lawyers, during the first two days, and the Justices, thereafter, have the most difficult roles. It will be beneficial if the time can be allotted to review with each of these individuals their perception of the way in which they should portray their roles.

The students who will be witnesses should meet with their respective lawyers to discuss what information each will contribute at the hearing. (If an attorney is available, he could best be used on this day.)

Assignment III: Evidentiary Hearing — United States District Court for the Southern District of Iowa, Central Division

Judge Stephenson presiding.

The lawyers' instructions contain all the information necessary for the trial. See Role Descriptions 1 and 2, below.

The teacher should allow the lawyers representing Tinker to present their witnesses first. The lawyers for the school board may then cross-examine the Tinker witnesses. The Tinker lawyers may, of course, cross-examine any witnesses presented by the school board.

Assignment IV: Oral Argument Before the Supreme Court

Before the Supreme Court the lawyers may present no witnesses but must present a concise legal argument grounded on available legal precedent, and the lawyer's knowledge of what might appeal to at least five justices. Although the facts of the case are obviously material, they have already been determined at the trial level. Appellate courts decide points of law; they do not determine facts.

The objective before the Supreme Court is to build a minimum winning coalition of five justices.

During the oral argument, either the Chief Justice or any of the associate justices may, at any time, interrupt the lawyers for the purpose of clarification of any point being offered.

Assignment V: In Camera or Conference Session of the Supreme Court

In the conference session (held *in camera*, that is in the justices' chambers) each justice first gives his opinion of (1) what are the relevant facts of the case, (2) what are the issues involved in the case, (3) how the conflict should be resolved (should the injunction be granted), and (4) what reasoning should be contained in the opinion.

The justices give their view of the case by order of seniority (the Chief Justice is always considered the most senior justice).

The order of seniority in this case is as follows:

1. Chief Justice Earl Warren
2. Justice Hugo Black (appointed to the bench in 1937)
3. Justice William O. Douglas (1939)
4. Justice John M. Harlan (1955)
5. Justice William J. Brennan, Jr. (1956)
6. Justice Potter Stewart (1958)
7. Justice Byron R. White (1962)
8. Justice Abe Fortas (1965)
9. Justice Thurgood Marshall (1967)

After the justices give their interpretation of the way in which the case should be decided, the Chief Justice decides the issues which will be voted upon.

Votes which might be taken, for example:

1. Should the injunction be granted?
2. Should the case be decided on First Amendment grounds?
3. Should a "test" for this type of situation be constructed?

When voting, the justices vote by reverse seniority, from the most junior justice to the Chief Justice.

The *in camera* discussion should be conducted using the "fishbowl" technique, with other participants in the simulation having a chance to observe without joining in and then evaluate the proceedings.

Assignment VI: "Debriefing" the Tinker Case

After a decision has been rendered by the "Supreme Court," the debriefing process can begin. It is important that sufficient time be allocated for it. One class period would certainly not be excessive. Discussion should center on the effectiveness of the arguments for each side, on the realism with which the roles were played and finally on an evaluation of the outcome of the actual *Tinker* case through examination of the excerpted decision.

STUDENT HANDOUT

HOW MUCH FREEDOM OF EXPRESSION DO YOU HAVE INSIDE THE SCHOOLHOUSE DOOR

FACTS

John F. Tinker, 15 years old, and Christopher Eckhardt, 16 years old, were high school students, in Des Moines, Iowa. Mary Beth Tinker, John's sister, was a 13-year-old student in junior high school.

In December 1965, a group of adults and students in Des Moines held a meeting at the Eckhardt home. The group determined to publicize their objections to the hostilities in Vietnam and their support for a truce by wearing black armbands during the holiday season and by fasting on December 16 and New Year's Eve. John, Mary, Christopher, and their parents had previously engaged in similar activities, and they decided to participate in the program.

The principals of the Des Moines schools became aware of the plan to wear armbands. On December 14, 1965, they met and adopted a policy that any student wearing an armband to school would be asked to remove it and if he refused would be suspended until he returned without the armband. The students were aware of the regulation that the school authorities adopted.

On December 16, Mary Beth and Christopher wore black armbands to their schools. John Tinker wore his armband the next day. They were all sent home and suspended from school until they would come back without their armbands. They did not return to school until after the planned period of wearing armbands had expired — that is, until after New Year's Day.

ISSUES

Charging that their First Amendment right to freedom of expression had been abridged, the students sought an injunction in District Court prohibiting their school board from carrying out the suspensions. A hearing was held to determine whether there was sufficient evidence to warrant such an injunction. Students in the school had been permitted to wear ordinary political buttons and even an Iron Cross (a traditional German medal for valor), so the Tinkers' lawyers argued that the school was restricting the free expression of a particular point of view, i.e., opposition to the Vietnam War.

The District Court upheld the position of the school authorities on the grounds that the armbands might have tended to "create a disturbance" in the school. An Appellate Court supported the District Court decision, and then the Supreme Court agreed to hear the case on final appeal.

STUDENT HANDOUT

TINKER APPEAL

DISTRICT COURT

Judge	Witness Chair
Court Officer	
Tinkers & Counsel	Counsel for School Board

WITNESSES

ORAL ARGUMENT

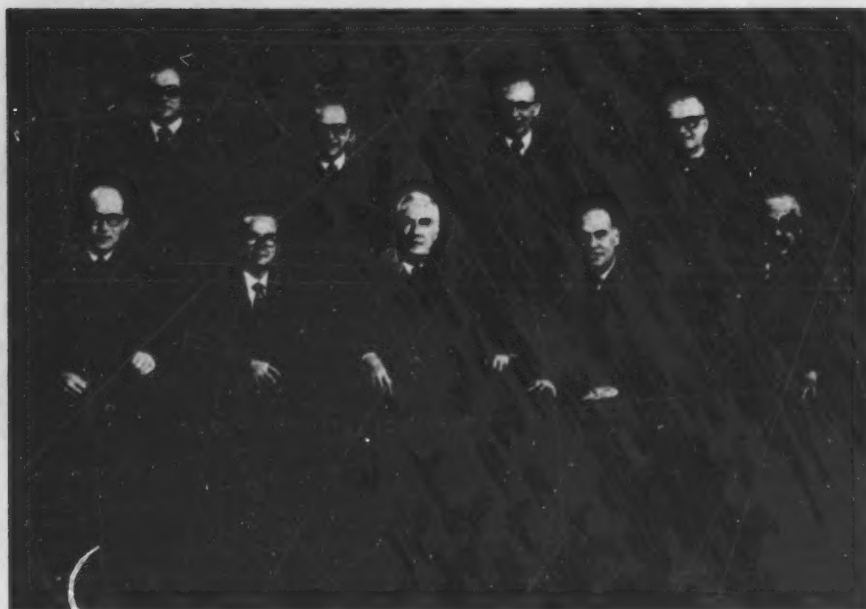
White	Brennan	Douglas	WARREN	Black	Harlan	Stewart
Marshall						Fortas
Counsel for Tinkers						Counsel for School Board

"IN CAMERA" SESSION

WARREN	
Marshall	Douglas
Stewart	Fortas
Brennan	Black
Harlan	White

STUDENT HANDOUT

TINKER VS. DES MOINES MOCK TRIAL



Row 1: Associate Justices Byron R. White, William J. Brennan, Jr., Chief Justice Warren E. Burger, Associate Justices Potter Stewart, Thurgood Marshall. Row 2: Associate Justices William H. Rehnquist, Harry A. Blackman, Lewis F. Powell, Jr., John Paul Stevens.

Role 1: Lawyer(s) for Tinkers — Dan Johnson

This role may be shared by more than one participant.

Your purpose is to convince the District Court Judge that he should grant an injunction that will restrain the authorities of the Des Moines Independent Community School District from disciplining your clients.

During the evidentiary hearing (similar to a trial court proceeding), you must not only cite the relevant law but also establish "the facts" of the case.

In citing the law, the following cases may be helpful: *Gitlow v. New York*, 268 U.S. 652, (1925) wherein it was determined by the Supreme Court that an individual's right of free speech is protected against state infringement by the due process clause of the Fourteenth Amendment; and *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, (1943); *Stromberg v. People of State of California*, 283 U.S. 359, (1931) wherein it was established by the Supreme Court that the wearing of an armband for the purpose of expressing certain views is a symbolic act and falls within the protection of the First Amendment's free speech clause.

In particular, you are seeking an injunction under 42 U.S.C. § 1983 which permits a person whose civil rights have been abridged in violation of the Fourteenth Amendment to sue for redress.

STUDENT HANDOUT

Since the facts of the case may be as important as the law, you must use those witnesses, and only those who are most likely to establish the facts you would like on the record. You, therefore, would want to call John, Mary Beth, and possibly Leonard Tinker (father), and Chris Eckhardt. You might also consider Chris' father, William, and John's American History teacher, Aaron McBride (fictional character).

In calling these witnesses, you need to stress the fact that your clients acted out of deeply felt convictions and by no means did they wish to display contempt for school authority or did they wish to cause a disturbance.

During your period of cross-examination of the defendants' witnesses, your purpose is to show that the school authorities singled out a particular type of speech concerning a particular topic (the Vietnam War) to prohibit. Your chief concern is to show that the regulation was unreasonable, or could not reasonably be defended as being necessary to the functioning of the school system.

Other cases you may rely upon are *Burnside v. Byars*, 365 F.2d 744 (5th Cir., 1966) and *Blackwell v. Essaquena County Board of Education*, 363 F.2d 749 (5th Cir., 1966), wherein it was held that a school regulation prohibiting the wearing of "freedom buttons" was not reasonable. The Court stated that school officials "...cannot infringe on their students' right to free and unrestricted expression as guaranteed to them under the First Amendment to the Constitution where the exercise of such rights in the school buildings and school rooms do not materially and substantially interfere with the requirements of appropriate discipline in the operation of the school." *Burnside v. Byars*, *supra*.

Role 2: Attorney(s) for School District — Allan A. Herrick and Phillip C. Lovien

Your purpose is to convince the District Court Judge that he should deny the plaintiff's request for an injunction.

At the evidentiary hearing (similar to a trial court proceeding), you must not only cite the relevant law but also establish "the facts" of the case.

In citing the law, the following cases may be helpful: *Dennis v. United States*, 341 U.S. 494, (1951); *Near v. State of Minnesota*, 283 U.S. 697, (1931); *Pocket Books, Inc. v. Walsh*, 204 F. Supp. 297 (D. Conn. 1962), wherein it was established that the protections of the free speech clause are not absolute and *United States v. Dennis*, 183 F. 2d 201, 212 (2d Cir. 1950), wherein it was asserted that "In each case (courts) must ask whether the gravity of the 'evil', discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger."

Since "the facts" of the case may be as important as the laws cited, you must make every effort to insure that the record displays those facts which you wish to have on the record. In light of this, you would want to call Dennis Pointer (Mary Beth's math teacher), Andrew Burgess (the high school principal), Leonard Carr (the school board president), and perhaps others.

Your prime concern on examination of your witness is to display the fact that "there was reason to expect that the protest would result in a disturbance of the scholarly, disciplined atmosphere within the classroom and halls of your schools."

On cross-examination of the plaintiffs, your purpose is only to ascertain if they were aware of the regulation.

STUDENT HANDOUT

Role 3: John F. Tinker

You, your parents, and your friends have been against the American involvement in the Vietnam War from the beginning. You feel that there is no justification for American participation in a foreign "civil war".

You have participated in anti-war protests in the past and, along with your parents and friends, you decided to wear a black armband to school to display your support for the continuation of the Christmas truce and your grief for those who have died in Vietnam.

Mary Beth and Chris wore their armbands on Monday, but you were a little hesitant. However, after Mary Beth and Chris were suspended, you decided to wear your armband on Tuesday. You felt self-conscious because of the stares your armband drew, but you felt determined that it was your right to express your views in this way. After third period, you were called to the principal's office. Upon your refusal to take off the armband, you were suspended.

Role 4: Christopher Eckhardt

A plaintiff, age fifteen, who attended Roosevelt High School.

You wore an armband on Monday, the first day of the demonstrations. You are, perhaps, more than the Tinkers, vocal about your opposition to the war. (See role sheet for #3, John F. Tinker)

Role 5: Mary Beth Tinker

A plaintiff, age thirteen, who attended Warren Harding Junior High School. (See role sheet for #3, John F. Tinker; and #4, Chris Eckhardt.)

Role 6: Leonard Tinker

You are the father of John and Mary Beth Tinker and completely support their feelings in regard to the Vietnam war. (See role sheet #3, John F. Tinker; and #5, Mary Beth Tinker.) For further reference, see Justice Black's dissent.

Role 7: William Eckhardt

You are the father of Chris Eckhardt and completely support his feelings in regard to the Vietnam War.

You and your wife gave Chris the idea to wear the black armband. After the school authorities declared the wearing of armbands illegal, you were the first to see the possibilities for a test case on "free speech" grounds. (See also the role sheet for #3, John F. Tinker; and #4, Chris Eckhardt.)

Role 8: Dennis Pointer

You are Mary Beth Tinker's math teacher. Mary Beth entered your room on the Monday of the demonstration wearing her armband. The armband caused a discussion of the War; it lasted all period and completely disrupted your class.

STUDENT HANDOUT

Role 9: Aaron McBride

You are John Tinker's history teacher. The wearing of the armband caused no disruption in your class, and you believe that this form of symbolic protest is akin to "pure speech" and as such is protected by the First Amendment.

John is one of your best and most hard-working students; you believe the school board should never have prohibited the armbands.

Role 10: Andrew Burgess

You are the principal of North High School. You heard about the upcoming armband demonstration and called an administration meeting to head off the problem. The demonstrators, fearing a disruption of the school program, decided to ban the wearing of armbands.

Role 11: Leonard Carr

You are the president of the Des Moines school board. You support the decision of the school administrators because the community is deeply divided on the war and you fear any disturbance will lead to a major conflict.

NOTE: Students assigned the roles of Supreme Court Justices may wish to do further research. A great deal of material on each Justice should be available at any library.

Role 12: Hugo Black

Justice Black is a "New Deal" Democrat and is sometimes termed a populist.

Black was very much a part of the constitutional revolution of the Warren Court, but to brand Black as a liberal and associate him with Justices Douglas or Brennan would be to oversimplify the case and lead to error in interpretation.

Justice Black fought for his entire judicial career for "incorporation" (making the Bill of Rights applicable to the states through the "due process" clause of the Fourteenth Amendment). This struggle often led to his agreement with the liberals. For example, in the censorship cases, Douglas and Black took the same absolutist position that the First Amendment allows no censorship *at all*.

The Justice from Alabama departs from the positions usually taken by the liberal bloc when questions of equality are reviewed by the Court. The equality category of cases commonly includes poverty law, indigents, and protest demonstrations.

*"Black was a self-styled strict constructionist. In discussing the Constitution he explained: 'I believe the Court has no power to add or subtract from the procedures set forth by the founders... I shall not at any time surrender my belief that the document itself should be our guide, not our own concept of what is fair, decent, and right.'"*¹

¹From a short biography of Justice Black in *The Supreme Court and Its Great Justices* by Sidney H. Aron, Arco Publishing Co., Inc., New York, 1971.

STUDENT HANDOUT

Role 13: Byron White

Byron R. White is the first native of Colorado to become a Justice. When he was first named to the Court in 1962 by President Kennedy, a long-time friend, his accomplishments were considerable: Phi Beta Kappa, Rhodes Scholar, All-American football star, professional football player, member of the Football Hall of Fame, decorated naval officer, lawyer, major assistant in a presidential election campaign and deputy attorney general. On the Court, he has aligned himself with the conservative element to the surprise of many who believed he would vote consistently with the liberal bloc.

The son of the mayor of Wellington, a small town in Colorado, Justice White achieved an outstanding academic and athletic record at the University of Colorado and was named an All-American halfback. To earn money for his law training, he played for the Pittsburgh Pirates (now Steelers) in 1938 and was the leading ground gainer in the National Football League. Then followed a period at Oxford University as a Rhodes Scholar, interrupted by the beginning of World War II. Justice White entered Yale Law School, and played in 1940 and 1941 for the Detroit Lions at the same time. He served in the Navy in the Pacific, where he renewed his acquaintance with John F. Kennedy, whom he had met in England. Completing law school after the war, he was law clerk to the late Chief Justice Vinson and then established a practice in Denver, Colorado, eventually handling considerable corporation work. He took little part in politics until 1960, when he went to work with the Kennedy forces, and was credited with delivering 27 of Colorado's 42 convention votes for Kennedy. He then ran the Citizens for Kennedy organization during the 1960 campaign, and after the election was appointed deputy attorney general.

Role 14: John Marshall Harlan

Born in Chicago in 1899, Harlan was the grandson and namesake of a Supreme Court Justice. He graduated from Princeton in 1920, Oxford in 1923, and New York Law School in 1924. He was admitted to the bar in 1925, practiced law in New York City, and was appointed to the Supreme Court by President Eisenhower in 1954.

Although his dissents from the decisions of the activist Warren Court won him a reputation as a conservative, he may more accurately be described as a firm believer in the strictly judicial nature of the Court's function. He considered it his duty to decide each case according to the law, as the law had been determined.

Role 15: Chief Justice Earl Warren

The years that Earl Warren presided on the Supreme Court were years of legal revolution. The Warren Court set a new path in race relations (*Brown v. Board of Education of Topeka, Kansas*), discrediting the legal basis for discrimination and, as it happened, helping to release long-suppressed emotional results of racism. It wrote practically a whole new constitutional code of criminal justice, one restraining the whole process of law enforcement from investigation through arrest and trial, and applied the code rigorously to state and local activities formerly outside of federal standards. It greatly restricted governmental authority to penalize the individual because of his beliefs or associations.

STUDENT HANDOUT

Warren favored most of the major changes in constitutional doctrine undertaken by the Court. As a statesman, Warren had a sense of history, an understanding of people and firmness of character. He was open, optimistic, and idealistic without ideology. He saw good in other human beings and he was decisive.

Earl Warren achieved his greatest fame as Chief Justice of the Supreme Court but Warren began his career as a California politician. Prior to his appointment by President Eisenhower to the Court, Warren served as Governor of California.

After he retired from the Supreme Court, Warren revealed, in a televised interview, that he was still a politician at heart when he responded that he felt the most significant decision he participated in was *Baker v. Carr*, 369 U.S. 186 (1962), (the historic "one-man — one-vote" reapportionment decision). *Baker v. Carr*, Warren felt, was his most significant decision because it removed the greatest single impediment to the democratic election of representatives of the people.

Role 16: Thurgood Marshall

Thurgood Marshall, in 1967 became the first Negro ever named to the Court. Justice Marshall is part of the "activist" and "liberal" section of the Court. He will tend to favor individuals against the state or the weak against the strong.

The son of a Pullman car steward and great-grandson of a slave, Marshall has made a career out of causes but seldom has been a controversial man personally. He has the reputation of being the man who led the Negro civil rights revolution to its first and often its biggest victories in the courts. His most notable victory came in the Supreme Court's 1954 decision, *Brown v. Board of Education*, which outlawed racial segregation in the schools. Assessing his successes, one friend said Marshall's chief asset was "his ability to take very sticky situations and patch them over with his personality." A long-time white associate said perhaps Marshall's most "obvious characteristic" was his capacity "to put you at ease on the matter of race." He has been likened to former Chief Justice Warren in his views, reportedly sharing the conviction that difference of opinion can be negotiated and being more interested in the background of a case than in its purely technical side. In 25 years as counsel for the National Assn. for Advancement of Colored People and the NAACP Legal Defense and Education Fund, Marshall argued 32 cases before the court, emerging the winner 29 times.

Role 17: Abe Fortas

Justice Fortas had a broad legal knowledge, sound judgment, and a liberal philosophy. It is not uncommon for Supreme Court Justices to change the character of their legal opinions after their appointment to the bench. Fortas' performance, however, has been entirely consistent with the reputation he had established as a private lawyer. He championed the civil rights of the small and often obscure individual as well as defending corporate giants such as Coca Cola Company. He aroused national interest when he defended a number of individuals termed as "Security Risks".

Role 18: Potter Stewart

Potter Stewart was the fifth and last justice named by President Eisenhower. As did Justice Brennan (in 1957), he joined the Court during its stormy years after the landmark school desegregation case in 1954.

The conservative group in 1958 consisted of Justices Frankfurter, Clark, Harlan, and Whittaker. The liberal group consisted of Chief Justice Warren and Justices Black, Douglas, and Brennan.

STUDENT HANDOUT

The basic difference between these groups was thought to relate primarily to the Justices' differing views as to the appropriate use of the Court's power to hold unconstitutional actions of other branches of government. The "liberals" saw the Court as a guardian of the individual liberties protected by the Bill of Rights. They tend to interpret the Bill of Rights in a broad fashion.

The conservatives adopted a narrow view of the Bill of Rights and in a situation wherein a choice was necessary between individual liberty and the power of the state, the conservatives tend to support the power of the state.

Justice Stewart soon became known for independence of mind and, when the court divides evenly, he often casts the deciding vote. He generally leans toward a liberal position.

Justice Stewart practiced law in New York City and Cincinnati, serving on the City Council and as vice mayor of the latter city. He assisted the late Sen. Robert A. Taft in his efforts to gain the Republican presidential nomination in 1948, and in 1952 worked in the Eisenhower presidential campaign. President Eisenhower appointed him to the 6th Circuit Court of Appeals in 1954 and to the U.S. Supreme Court five years later.

Role 19: William J. Brennan, Jr.

William J. Brennan, Jr. is one of eight children of an Irish immigrant couple who came to the United States in 1890. A significant influence in the choice of Justice Brennan's career was his father who worked in the establishment of labor unions in the city of Trenton. When the opportunity arose, the elder Brennan ran for a council seat on the labor ticket. This involvement with the labor movement had the effect of interesting the young lawyer in labor law, an interest which would much affect his career.

Justice Brennan won a scholarship to Harvard Law School and entered private practice in New Jersey specializing in labor-management relations. The future Justice gained a partnership in a Newark law firm because of his expertise in labor law. During this partnership, Brennan became involved in a movement that sought the restructuring of the court system in New Jersey. He felt that the court system would be improved if it was consolidated. This idea of consolidation was based on his belief that courts existed to serve the people and to protect their rights. After a considerable battle, the court system was changed to one of general jurisdiction. His appointment to the New Jersey Superior Court in 1949, by Governor Alfred E. Driscoll, may have been a result of his work in the reform movement.

He soon attracted the attention of the judiciary by initiating pretrial conferences with litigants and disposing of many cases, thus keeping his docket relatively clear. In 1952, Governor Driscoll named him to the New Jersey Supreme Court where he developed a reputation as a generally liberal jurist. President Eisenhower in 1956 named him to the U.S. Supreme Court. Justice Brennan usually aligns himself with the "liberal-activist" element of the court, but he has the judge's strong sense of precedent.

Perhaps a speech of the Justice can best sum up his feelings in regard to the job of the court: "The constant for Americans, for our ancestors, for ourselves, and we hope for future generations is our commitment to the constitutional ideal of liberty protected by the law. . . It will remain the business of judges to protect the fundamental constitutional rights which will be threatened in ways not possibly envisaged by the Framers. . . the role of the Supreme Court will be the same. . . as the guardians of (constitutional) rights."

STUDENT HANDOUT

Role 20: William O. Douglas

William O. Douglas is the foremost conservationist, naturalist, and traveler in the history of the Supreme Court. He has written more books, mainly on conservation and travel, than any figure, judicial or otherwise, on the American scene. Douglas is the only individual justice whose picture is likely to appear, as it has, in *Field and Stream* magazine singing, "The Song of Sergeant Parker".

Douglas served on the Court longer than any justice in the Court's history. He was appointed to the Supreme Court by F.D.R. in 1939, when he was forty-one and he has been its foremost exponent of individual liberty, and particularly of freedom of speech.

Justice Douglas was born on October 16, 1898, at Maine, Minnesota. His father was a home missionary for the Presbyterian Church. As a small child, Douglas had infantile paralysis. The doctors told him that he would lose the use of both of his legs. But he never learned how to be a loser. He hiked the mountains every day to rebuild his limbs.

As he was growing up, he rode freight cars with hobos, shared meals with them, and slept outdoors with them. He has told of his enjoyable experiences in many of his speeches.

William O. Douglas is probably best known for his advocacy of freedom of speech. A good example of this may be found in the *Dennis v. United States* case. A group of men were accused of advocating forcible overthrow of the government by organizing a group which in turn would advocate such overthrow. More precisely, the charge was not that the defendants themselves had advocated or organized such action, but that they had conspired and organized to teach others to do so by teaching from books written by Marx, Lenin, Stalin, and others, who in turn were asserted to have advocated forcible overthrow of the government. The statute, as construed and applied to support the conviction of these defendants, was upheld by the majority of the Court. Justice Douglas dissented. He said he would have no difficulty if the defendants had been teaching people to commit sabotage or assassinate the President or plant bombs. But he found no evidence that such a thing occurred. Douglas did this to preserve the right of free speech as an American value.

Douglas is totally capable of doing his judicial work by himself and he uses law clerks probably less than any other Justice. Because of his extraordinary brilliance, he is the fastest worker of any Justice of this century, except perhaps Justice Holmes. The range of his work is vast, running not merely to great constitutional questions, but also matters of taxation, matters of business reorganization in bankruptcy, all of which are difficult questions of the law.¹

Douglas can often make his point with just one sentence. An example of this power are his works in regard to a case in which a doctor was excluded from the practice of his profession in New York: "When a doctor cannot save lives in America because he is opposed to Franco in Spain, it is time to call a halt and look critically at the neurosis that has possessed us."

¹ Justice Douglas resigned in 1976.

OPTIONAL VALUE STRATEGY

AN EXERCISE IN DISSENT

OBJECTIVES: To get students to express their dissent in constructive ways

To teach students appropriate means of expressing their opposition

ACTIVITY:

1. Divide the class into groups of 5-10 (depending on class size).
2. Ask each group to come up with one or two opinions which disagree with present legal policy on freedom of expression in a particular situation or areas (the teacher needs to pick an area with which she or he feels comfortable) such as the classroom, the school, home, their home town, the state, the U.S. To stimulate students' brainstorming, ask them to consider experiences they have had in which they were either forbidden or did not feel free to express their disagreement.
3. Ask each group to select an appropriate person to whom they ought to direct their dissent. Suggest that they consider whether it is a person or a rule or a law which is limiting their freedom of expression, then determine which is the person who made or enforces the rule or law.
4. Have each group decide on 2 or 3 media for the expression of their dissent. Make such suggestions as a letter, telegram, public service announcement, a collage, painting, picture, skit for a TV commercial, picket signs, protest song, role-play, demonstration, etc.
5. Help each group to organize teams of 2 or 3 students to work on the various media for dissent and give them time in class or at home to complete their projects.
6. Select a time for them to present their dissent in class.
7. After each team has presented its letter, skit, picketing, role-play, have the class discuss the following issues:
 - a. is the dissent legal?
 - b. is it designed to bring about change or to antagonize adversaries?
 - c. what would be the probable effect of the dissent?
 - d. (The teacher needs to use discretion and judgment whether to open this issue to discussion.) whether or not the dissent ought actually be demonstrated.
8. A possible extension would be to have follow-ups of those messages (etc.) which were actually sent.

CONCLUDING ACTIVITIES

INDIVIDUAL RIGHTS POLL

OBJECTIVES: To have students re-evaluate their attitudes on various individual rights issues.
To have students examine any changes in their attitudes about individual rights issues.

- ACTIVITIES:**
1. The Individual Rights Poll can be administered to the class. Discussion should focus on the following:
 - a. What is the majority opinion on each issue (place C, P or U on board).
 - b. Ask students who have changed their minds on any of the issues since the beginning of the course to explain what influenced the change.
 - c. Ask those with minority views to express the reasons for their opinions.
 2. Other possible concluding activities:
 - a. Redo initial Value Survey.
 - b. Have students do value collage to express their views on individual rights.
 - c. Do a value continuum on some of the chapter's key issues (see Chapter One for instructions).

STUDENT HANDOUT

INDIVIDUAL RIGHTS POLL WHAT DO YOU THINK?

The subject of Individual Rights has become of paramount concern among high school students. There is a growing request for legal education and case study analysis among school administrators and curriculum developers. Indicate your opinion on the following topics by placing P for pro, C for con, U for undecided.

1. _____ Individuals should be guaranteed rights against search and seizure without a warrant.
2. _____ Individuals should be stopped and frisked only under suspicion of a serious crime.
3. _____ The legal court system should be computerized to alleviate delay.
4. _____ The death penalty should be imposed for serious crimes.
5. _____ Individuals should be allowed to say anything they wish in what ever manner they prefer.
6. _____ School administrators should permit pregnant girls in school throughout their term.
7. _____ Individuals should be informed of more rights than those normally explained at an arrest.
8. _____ The juvenile system should be revised to include more rights.
9. _____ The press media should be prevented by some government imposition from printing unsubstantiated speculations.
10. _____ Consumers should be guarded against warranty or liability technicalities by law.
11. _____ Abortions should be prevented since they violate the pursuit of life and liberty.
12. _____ Laws should be made to eliminate interpretations.

CONCLUDING ACTIVITIES

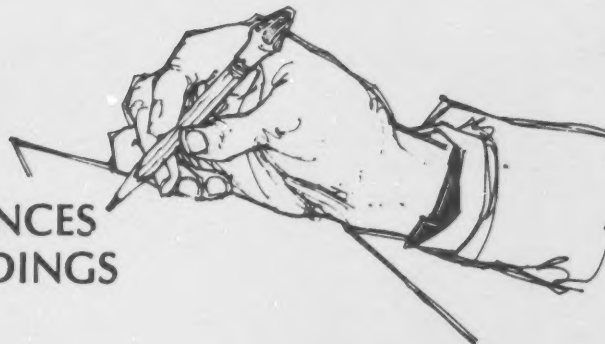
DISCUSSION QUESTIONS

1. What are the limits on free expression? Do you feel that the Supreme Court's interpretations of First Amendment rights with respect to free expression are too restrictive? Explain and give examples to support your answer.
2. Has the concept of freedom of expression changed since the Constitution's creation? If so, in what ways and how did this come about?
3. Who should control information and censorship? Explain and present arguments to support your answer.
4. Who should have free speech and other freedoms of expression? Why? What should be the limitations?
5. Should dissent be allowed in our society? When does it overstep its bounds?

VOCABULARY

- ACTIVITIES:**
1. The legal terminology charade suggested in Chapter One could be used as a vocabulary review.
 2. This list could be used as a basis for a test.

AUTHOR REFERENCES SUGGESTED READINGS



These resources are included in the "Annotated Bibliography" in the Appendix.

American Bar Association. *The Rights of Fair Trial and Free Press...*

Bragdon. *Pursuit of Justice: An Introduction to Constitutional Rights.*

Cohen. *Bill of Rights: A Source Book.*

Dissent and Protest: Case Studies for Student Discussion. Xerox Corp.

Golding. *Lord of the Flies.*

Institute for Contemporary Curriculum Development. *Dissent: What Is Its Role in a Free Society?*

Latham. *American Justice on Trial.*

Liston. *The Right to Know: Censorship in America.*

Longaker. *High School Law Program Attorney's Source Book.*

Martz. *Freedom of Expression.*

Newman and O'Brien. *Street Law: A Course in Practical Law.*

Orwell. 1984.

Pearson. *Liberty Under Law: Case Studies of the Basic Principles of the Bill of Rights.*

Ratcliffe. *Great Cases of the Supreme Court.*

Vital Issues of the Constitution.

Starr. *The Supreme Court and Contemporary Issues.*

AUDIO/VISUAL MATERIALS



These are relevant audio-visual materials. Descriptions are given in the Appendix.

- Action Against the Law
- In Search of Justice
- Freedom of Speech
- Free Press v. Fair Trial by Jury: The Sheppard Case
- Freedom to Speak: People of New York v. Irving Feiner
- First and Essential Freedom (The)
- First Freedom (The)
- Free Press and Speech
- Freedom of the Press
- Freedom of the Press Today
- Liberty: A Question of Speech
- Justice and the Law
- Chicago Conspiracy Trial (The)
- Constitution and Censorship (The)
- Controversial Film (A)
- Fight for Our Rights (The) — Sets I and II

APPENDICES



In a number of cases dissenting opinions have in time become the law.

— Charles Evans Hughes

You can't legislate intelligence and common sense into people.

— Will Rogers

Laws that do not embody public opinion can never be enforced.

— Elbert Hubbard

One man's word is no man's word; we should quietly hear both sides.

— Johann Wolfgang von Goethe

APPENDIX A

ANNOTATED BIBLIOGRAPHY

- American Bar Association. *Law and the Courts*. American Bar Association, 1974.
Describes basic court procedures in civil and criminal cases, rights of the accused, federal and state judicial systems. Contains a glossary of legal terms.
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States and explains the American Bar Association standards for fair trial and free press.
- American Bar Association Special Committee on Youth Education for Citizenship. *Bibliography of Law-Related Curriculum Materials*. American Bar Association, 1974.
Lists and describes over 500 books and pamphlets.
- American Bar Association Special Committee on Youth Education for Citizenship. *Gaming: An Annotated Catalogue of Law-Related Games and Simulations*. American Bar Association, 1975.
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Lists and describes over 400 tapes, films, and filmstrips.
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A report based upon a study of law-related education in elementary and secondary schools and public and private agencies which have supported or might support such projects.
- Barrett, E.L., and P.W. Button, eds. *Constitutional Law: Cases and Materials*. Foundation Press, 1965.
A book of useful case references.
- Bassiouni, M. Cherif et al. *Crimes and Justice*. Justice in America Series. Houghton Mifflin Co., 1969.
Investigates laws and their functions, discusses criminal procedure and legal decisions affecting the rights of the accused, and includes a general discussion of crime in the United States. Photos, charts, and questions.
- Bassiouni, M. Cherif and Sister Thecia Shiel. *Youth and the Law*. Justice in Urban America Series. Houghton Mifflin Co., 1970.
Discussion of the problems of youth and the family. Covers the roles and responsibilities of parents, juvenile crime, juvenile court and its proceedings. Uses real and hypothetical cases (including *Gault* case) to define various offenses. Questions and activities, bibliography.
- Bill of Rights Newsletter*. Published semi-annually by the Constitutional Rights Foundation, 609 S. Grand Ave., Los Angeles, CA. 90017.
Each issue provides classroom activities — case studies, simulations, value surveys — and background material on a particular timely issue related to the first ten Amendments or other legal issues.

Black, N.C. *Black's Law Dictionary*. West Publishing Co., 1968.

A legal dictionary very useful as a basic reference.

Bragdon, Henry W. and John C. Pittenger. *The Pursuit of Justice: An Introduction to Constitutional Rights*. MacMillan Publishing Co., 1969.

Historical approach to constitutional rights, stressing the role of precedent. Explanations of the Constitution, extensive glossary, questions, photos, and cartoons.

Channing L. Bete Company, Inc. *Know Your Legal Rights*. Channing L. Bete Co., Inc., 1969.

Simple presentation of basic rights under criminal and civil law. Tells when to contact a lawyer. Cartoon illustrations.

Cohen, William, Murray Schwartz and DeAnne Sobul. *The Bill of Rights, A Source Book*. Benziger, Inc., 1968.

Source book on constitutional law which explains the application of the Constitution and judicial decisions to equal protection, due process, freedom of expression, and freedom of religion. Bibliography, table of cases.

Communications Research Machines. *Psycho Sources: A Psychology Resource Catalogue*. Bantam Books, 1973.

A highly imaginative, informative, innovative resource book and anthology of up-to-date books, films, simulation games, and other resources in political and social psychology. Highly recommended for providing imaginative insights into controversial topics.

Conklin, G. and C. Wilcox. *Inquiry*. Wisconsin Bar Foundation, 1971.

Outlines containing problems, summaries of laws and relevant cases on student rights, ecology, landlord-tenant, auto law, and Bill of Rights freedoms.

Cremer, J. Shane. *A Citizen's Guide to His Legal Rights*. Holt, Rinehart and Winston, 1971.

Discussion of constitutional rights on probable cause, police investigation, arrest, search and seizure, exclusion of evidence on theoretical and practical grounds, and of recent Supreme Court rulings on the Fourth, Fifth and Sixth Amendments. Appendix on what to do if arrested.

Cremer, J. Shane. *The Law of Arrest, Search and Seizure*. Saunders Co., 1968.

Introduction to probable cause, arrest, search and seizure as they relate to law enforcement officers.

Cuban, Larry and Lawrence Aaronson. *You've Been Arrested*. People and the City Series. Scott, Foresman & Co., 1972.

Discussion of rights of the accused and criminal procedure, covering the *Gideon* (right to counsel) and *Escobedo* (pre-trial rights) cases and the issues raised in *In Re Gault* (juvenile rights). Excerpts from novels, hypothetical cases, cartoons, and photos.

Davidson, S.E., ed. *Reflections on Law-Related Education*. American Bar Association Special Committee on Youth Education for Citizenship, 1973.

Speeches from the Regional Conference on Law-Related Education held in Philadelphia, Pennsylvania, on May 21 to 22, 1973.

Davidson, S.E., ed. *Media: An Annotated Catalogue of Law-Related Audio-Visual Materials*. American Bar Association Special Committee on Youth Education for Citizenship, 1975.

Descriptions of and distributors for law-related audio-visual materials.

Dissent and Protest: Case Studies for Student Discussion. Xerox Corp.

Case studies help student decide which forms of protest are legitimate and which are not, and to what extent the majority should tolerate dissent.

Frankel, Jack. *Helping Students Think and Value: Strategies for Teaching the Social Studies.* Prentice-Hall, 1976.

A selection of effective value strategies for topics in social studies.

Galloway, John, ed. *The Supreme Court and the Rights of the Accused.* Facts on File, Inc., 1973.

Comprehensive discussions of the facts, issues, and decisions of many Supreme Court cases involving the rights of the accused. Includes information on the right to counsel, freedom from self-incrimination, right to cross-examination, right to a speedy trial, right to obtain witnesses, rights relating to juries, the meaning of double jeopardy, the use of confessions, Fourth Amendment protections from searches and seizures, admissible eye-witness identifications, capital punishment, the rights of juveniles, and plea bargaining.

Gerlach, R.A., and L.W. Lamprecht. *Teaching About the Law.* W.H. Anderson Co., 1975.

The most comprehensive available source detailing teaching strategies and resources for law-focused education.

Gibson, W. *Lessons in Conflict: Legal Education Materials for Secondary Schools.* Lincoln Filene Center for Citizenship and Public Affairs, 1971.

Provides strategies and lessons for raising issues in several areas of the law.

Goodykoontz, William, ed. *Law: You, the Police, and Justice.* Contact Series. Scholastic Book Services, 1971.

Readings, cartoons, photos, and hypothetical cases presenting the need for law, the role of the police, arrest and trial, rights of the accused, and citizenship rights and duties. Includes 31 student books and logbooks, 4 posters, and a record.

Inbau, Fred Edward and Marvin E. Aspen. *Criminal Law for the Layman: A Guide for Citizen and Student.* First edition. Chilton Book Co., 1970.

Contains easily understood facts about criminal law and its application on all levels — on the street, in the police station, in the trial courts, in the appellate courts.

Institute for Contemporary Curriculum Development. *Dissent: What Is Its Role in a Free Society? Patterns of Civilization: America Series.* Cambridge Book Company, 1972.

Examination of dissent in America, exploring early dissent, the abolitionists, and women's suffrage movements, excerpted writings, including poems and essays, from works on dissent by famous protesters such as Henry David Thoreau, William Lloyd Garrison, and others. Photos and discussion questions.

Johnson, Gerald. *The Supreme Court.* William Morrow & Co., Inc., 1962.

General introduction to the role of the Supreme Court. Discusses the types of decisions it makes and its power to define law, and provides a simplified chronology of important Court decisions and personnel. List of Supreme Court justices. Illustrated with woodcuts.

Kellman, Maurice. *The Supreme Court: Judicial Power and Social Change.* Xerox Education Publications, 1973.

Explores the sources of the Supreme Court's power. Covers the nature of cases chosen, the origin of the Court's jurisdiction, its methods of interpreting the Constitution, the role of precedent, and the limits of the Court's power. Includes excerpts from the Constitution, photos of the justices, and discussion questions.

Latham, Frank B. *American Justice on Trial*. Franklin Watts, Inc., 1972.

Discusses the use of trials and criminal justice to prosecute and silence dissenters, and describes the inadequacies of the trial system. Gives summaries and discussions of important cases.

Lewis, Anthony. *Gideon's Trumpet*. Random House, 1964.

The story of the expansion of individual rights through Gideon's appeal to the courts.

Liston, Robert A. *The Right to Know: Censorship in America*. Franklin Watts, Inc., 1973.

Describes censorship of books, movies, television, and radio. The author emphasizes the conflict between an absolute view of freedom of speech and society's demand for some restraints on speech.

Lockhart, William et al., eds. *The American Constitution: Cases-Comments-Questions*. West Publishing Co., 1970.

The title accurately describes the book.

Longaker, R.P., and C.N. Quigley, eds. *High School Law Program Attorney's Source Book*. American Bar Association Law and American Youth Committee, Young Lawyers Section, 1973.

Outlines of practical teaching suggestions, case studies and background readings designed to assist attorneys in junior and senior classrooms. Provides further detailed information on setting up courtroom simulations.

Martz, Carlton S. *Freedom of Expression*. Constitutional Rights Series. Benziger, Inc., 1976.

Case studies and discussion questions help students examine the First Amendment rights to freedom of speech, petition, and assembly. Special section on freedom of expression rights of students.

Nelson, Truman. *The Torture of Mothers*. Harper and Row Publishers, Inc., 1968.

Account of a street incident in Harlem which led to police brutality and suspension of due process rights. Taken from actual words of those involved and their mothers.

Newman, Jason and Edward O'Brien. *Street Law: A Course in Practical Law*. West Publishing Co., 1975.

Provides information on the practical aspects of law. Aimed at teaching students how to make the law work for them. Includes much material on criminal law, consumer law, family law, housing law, law affecting individual rights, and environmental law. Suggests over 150 open-ended problems for discussion. Appendices include the Amendments to the Constitution (including the proposed Equal Rights Amendment) and a glossary. Photos. Teacher's guide includes references to key cases and statutes, suggested teaching strategies, and detailed mock trials for each subject area.

Oliver, Donald W. and Fred M. Newmann. *Rights of the Accused*. Public Issues Series. Xerox Education Publications, 1968.

Illustrates due process and rights of the accused through a fictional case study. Includes questions and explanation of legal issues.

Pearson, Craig and Charles Cutler, eds. *Liberty Under Law: Case Studies of the Basic Principles of the Bill of Rights*. Xerox Education Publications, 1975.

Anthology of cases on individual freedoms and constitutional rights. Covers *habeas corpus*, due process, bail, fair punishment, and freedom of expression, among others. Drawings, discussion questions, and excerpts from the Constitution.

Ratcliffe, Robert H., ed. *Great Cases of the Supreme Court*. Trailmarks of Liberty Series. Houghton Mifflin Company, 1975.

Case book which makes journalistic presentations of famous cases on freedom of religion and expression, search and seizure, slavery and citizenship, right to vote, equal opportunity, and criminal procedure. Each case has discussion questions, activities. Glossary, list of cases, mock trial and trial script. Decisions for the cases are provided in a supplement to the book.

Ratcliffe, Robert H., ed. *Vital Issues of the Constitution*. Trailmarks of Liberty Series. Houghton Mifflin Co., 1975.

Selected important cases on freedom of religion, freedom of expression, federal power, the right to vote, equal opportunity, and the rights of the accused. An introductory essay explains the function of the various courts and our legal system. Mock trial scripts, glossary, photos, discussion questions, and bibliography.

Rosengart, Oliver and Gail Weinheimer. *The Rights of Suspects: The Basic ACLU Guide to a Suspect's Rights*. American Civil Liberties Union Handbooks Series. Avon Books, 1974.

Uses a question-and-answer format to discuss the implications of the Fifth and Fourteenth Amendments for the due process rights of Americans. Includes discussions of rights involved when individuals are involved in confrontations with police, rights of suspects upon arrest, due process rights in court, and options open to persons wishing to protest police misconduct in relation to an individual's constitutional rights. Appendix includes a sample writ of habeas corpus and a sample petition for the writ.

Simon, Sidney, Leland Howe and Howard Kirschenbaum. *Clarifying Values: A Handbook of Practical Studies*. Hart, 1972.

A pragmatic "Cookbook" of a large number of value strategies easily adaptable to legal or political themes. Highly recommended.

Starr, Isidore. *The American Judicial System*. Oxford Book Co., 1972.

Summarizes work of lower federal courts and explains the role of the U.S. Supreme Court. Questions for discussion follow each chapter.

Starr, Isidore. *The Supreme Court and Contemporary Issues*. Encyclopaedia Britannica Educational Corporation, 1969.

Discusses Supreme Court decisions through excerpts from important cases. Includes case backgrounds, decisions, and the significance. Covers civil rights, academic freedom, separation of church and state, freedom of expression, the reapportionment of electoral districts, antitrust decisions, and rights of accused. Photos and table of cases.

Summers, Robert S., A.B. Campbell and Gail Hubbard. *The American Legal System*. Ginn & Co., 1974.

Five booklets: Unit I, *Society's Need for Law*; Unit II, *The Techniques of Law*; Unit III, *Law and Social Change*; Unit IV, *Constitutional Protection of Basic Social Values*; and Unit V, *The Limits of the Law*. Presents basic legal concepts through real and hypothetical cases, extracts from laws and court opinions, and illustrative materials, inquiry-oriented with factual and open-ended questions. Includes photos, cartoons, charts, and facsimile of legal documents.

APPENDIX B

LAW AND LITERATURE BIBLIOGRAPHY SUGGESTIONS FOR LITERATURE AND FILMS To Be Used in a Law or Political Focused Curriculum

Bellamy, Edward. *Looking Backward*.

A Victorian novel about a man from the 20th Century who is transported back into the 19th Century. Fascinating view of the future by a Victorian.
(issues of personal freedom, individual rights, due process, right to dissent)

Camus, Albert. *The Stranger*.

A nonconformist commits unmotivated crime and is judged on his life style rather than his intentions. (For advanced students.)
(issues of due process, motivation, rules of evidence, minority rights, right of personal privacy, right to dissent)

Carroll, Lewis. "The Trial of the Knave of Hearts" in *Alice in Wonderland*.

Hilarious satire on the legal system but really thought-provoking. (Several film versions are available.) It is included in London's *The Law in Literature* (see below).
(issues of justice of courts, parody of legal system and due process)

Dostoevsky, Feodor. *Crime and Punishment*.

A young man plans the perfect crime. A penetrating psychological study. (For advanced students.)
(issues of guilt, punishment, and crime)

Durrenmatt, Friederich. *The Visit*.

A dramatic play about a woman who has been wrongly judged and returns to seek revenge. (An American film version called "The Visit" with Ingrid Bergman and Anthony Quinn is excellent.)
(issues of due process, perjury, cruel and unusual punishment, justice vs. morality; responsibility vs. guilt; rights of the individual vs. rights of society; the aims of sentencing)

Fanon, Franz. *The Wretched of the Earth*.

Poignant novel about the oppressed who become "criminals" — or do they become revolutionaries.
(issues of the social causes of crime, cruel and unusual punishment)

Golding, William. *Lord of the Flies*.

Novel about a group of boys marooned on an island, the society they create, and the disintegration of law as primitive instincts prevail. (Excellent film version available.)
(issues of the moral nature of man, power vs. justice, laws creating society)

Huxley, Aldous. *Brave New World*.

After a nuclear war the few survivors have to recreate their society. Imaginative and dramatic.
(issues of making laws, laws forming society, effect of law on culture)

Kafka, Franz. *The Trial*.

The whole order of justice is reversed, sentence and judgment preceding the trial. The suffocating effect of the bureaucratic maze of courts is brilliantly dramatized. This famous novel does not attempt to give a "realistic" picture of the law's operation, but rather to give a sense of man's alienation from the law and his powerlessness before it. The result is a novel with the exaggeration and immediacy of a nightmare. (For advanced students.) (A good film version with Tony Perkins is available that can aid discussion.)

(issues of due process, rights of the accused, fair and speedy trial, rules of evidence, justice vs. morality)

London, Ephraim, ed. *The Law in Literature*.

London, Ephraim, ed. *The Law and Literature*.

These two anthologies have a very broad excellent range (over 30) of selections of fables, short stories, or excerpts from novels dealing with legal themes. Highly recommended.

Melville, Herman. *Billy Budd*.

A young popular innocent sailor seems to be unjustly court-martialed. The whole problem of military justice is dramatically presented.

(issues of due process, military vs. civil courts, morality vs. justice, culpability vs. evidence, absolute justice vs. legal equity)

Orwell, George. 1984.

Well-known novel of a totalitarian society in which all aspects of life, including thought and speech, are controlled by the dominant party. Focuses on a man who decides to rebel against this control. A frightening view of a totalitarian society in the future.

(issues of personal privacy, individual rights, due process, right to dissent)

Poe, Edgar Allan. *The Pit and The Pendulum; Murders in the Rue Morgue; The Black Cat*.

Poe's short stories are highly symbolic, psychological, imaginative and therefore highly adaptable to almost any theme. These 3 are particularly good for law.

(issues of canon law vs. civil law, rights of the accused, cruel and unusual punishment)

Wouk, Herman. *The Caine Mutiny*.

A mentally unstable captain precipitates a mutiny on the U.S.S. Caine. The court martial of the officer who takes over the ship in a typhoon is a particularly relevant segment and is included in London's *The Law in Literature* (see above). The film version with Humphrey Bogart is excellent and highly recommended.

(issues of military justice, mental illness as defense of crime, guilt vs. responsibility)

Do not overlook the possibility of using any of the several television programs dealing with crime, the police, courts, lawyers, etc. as the basis for discussion of legal and political issues.

APPENDIX C

AUDIO-VISUAL MATERIALS AND DISTRIBUTORS

Action Against the Law. (16 mm film, 30 min.) Indiana University Audio-Visual Center. (TFC/Paramount, 1950).

An old but interesting excerpt from the Paramount Pictures film, "The Lawless," in which a newspaper editor is almost put out of business for courageously publishing his opinions about a series of interracial incidents between farmworkers and townspeople in a small California community. Raises questions concerning minority rights, race relations, due process, the need for law, and other basic concepts of law and the justice system.

Arrest and Seize. (16 mm film, guide, 16 min.) Under the Law series. Walt Disney Educational Media Company. (The Nelson Company, Philip Abbott, 1973).

A "stop action" film in which the police stop a boy and girl driving away from the vicinity of a crime and discover marijuana in their car.

Bill of Rights (The) — Its Meaning Today. (5 captioned filmstrips), International Film Bureau, Inc. (Creative Education, Inc., Donald G. Hoffman, 1959).

Each filmstrip portrays scenes from an imaginary land showing what life might be like without the protections guaranteed by our Bill of Rights.

Chicago Conspiracy Trial (The). (16 mm film or video tape, 140 min.) Time-Life Films, Inc. (BBC-TV, 1971).

A verbatim reconstructed drama of the "Chicago Conspiracy Trial," edited from the official trial transcript, which may be useful in discussions of due process and "political" trials. Teachers may want to review the film before showing it, as some may consider the language used inappropriate for their classes.

Constitution and Censorship (The). (16 mm film, 29 min.) The Constitution in Action Series. Indiana University Audio-Visual Center. (Center for Mass Communication of Columbia University, Stephen L. Sharff, 1959).

A useful 1959 film relating the issue of "prior restraint" to freedom of expression in the case of *Burstyn v. Wilson* which challenged the right of the New York Board of Review to censor films. Includes some history of licensing and censorship and discusses other relevant cases. Information in film should be supplemented with more recent rulings.

Constitution and Fair Procedure (The). (16 mm film, 29 min.) The Constitution in Action series, Indiana University Audio-Visual Center. (Center for Mass Communication of Columbia University, Stephen L. Sharff, 1959).

Presents *Leyra v. Denno*, in which a man, convicted of murder and sentenced to death, takes his case to the Supreme Court, claiming that his original confession was obtained under conditions which denied him procedural due process.

Controversial Film (A). (sound filmstrip, student manuals, guide, 7 min.) Civil Liberties: Contemporary Case Studies series. Guidance Associates. (Guidance Associates, 1972).

This material presents a fictitious situation which indicates the possible conflict between free expression and the need for public order. A political group shows a film with which a number of young people disagree. They demonstrate outside the hall where the film is being shown. Tension between the demonstrators and some of the people watching the movie heightens and there is a scuffle. The police instruct the owner of the hall not to allow the movie to be shown again. The audience is asked whether it is constitutional to convict the owner of the hall for continuing to show the film.

Crimes and Justice: Rights of the Accused. (sound slides, with cassette only, guide, 15 min.) Law-Focused Audio-Visual Series. Law in American Society Foundation. (Law in American Society Foundation, Robert H. Ratcliffe and John W. Wick, 1972). free loan (limited supply).

Examines the rights of the accused through the study of Supreme Court cases and a hypothetical case involving the arrest of a man suspected of selling drugs. Includes "stops" to aid discussion. Designed to supplement the student text, "Crimes and Justice" (Houghton Mifflin Company, 1974).

Due Process of Law. (16 mm film, 23 min.) The Bill of Rights in Action series. BFA Educational Media. (Educational Motion Pictures, Bernard Wilets, 1971).

A college student asserts that he has been denied due process when he is summarily suspended after an act of violence occurs on his campus. A hearing is conducted and the audience is asked to decide whether the student is receiving due process and whether he should be reinstated at the university.

Due Process of Law. (video tape, 29 min.) Lex Singularis series. Academic Support Center. (KETC-TV, The Missouri Bar, 1973).

Opens with a skit in which the "populatomis" football team is preparing for their big game against "Government U" by discussing their rights and how to protect them, centering on procedural and substantive due process. Concludes with a discussion between an attorney and high school students. Designed for use with the curriculum guide, "The Role of Law in a Free Society" (available from The Missouri Bar, 326 Monroe Street, Jefferson City, Missouri 65101).

Fight for Our Rights (The), Set 1. (4 sound filmstrips, guide, 17-18 min. each) Schloat Productions, Inc. (Schloat Productions, Inc., Virginia Benham, 1968).

Each filmstrip presents a basic right and a conflict arising from that right: "Freedom of Religion" (flag salute cases); "Freedom of the Press" (the trial of John Peter Zenger and the *New York Times v. Sullivan* libel suit); "The Right of Peaceful Assembly" (Poor People's Campaign in "Resurrection City").

Fight for Our Rights (The), Set 2. (4 sound filmstrips, guide, 13-18 min. each) Schloat Productions, Inc., Virginia Benham, 1968).

Each filmstrip presents a basic right and some conflicts arising from that right: "Freedom of Speech" (Stamp Act, cases involving opposition to World War I, cases involving opposition to Vietnam war); "The Right to Vote" (history of determination of who should vote); "The Right to Counsel" (indigents' right to defense lawyers); "The Right to Bear Arms" (Shay's Rebellion, recent assassinations).

First and Essential Freedom (The). (16 mm film, guide, 52 min.) Xerox Films. (ABC News, 1973).

A comprehensive documentary which shows how the First Amendment has been functioning in recent years. Discusses the uncovering of Watergate and the need for investigative reporting, the importance and functions of presidential news conferences, the effect of the Vietnam War on the credibility of the press, the publication of the Pentagon Papers and the ensuing conflicts, the protection of news sources and pros and cons of proposed shield laws, and other relevant aspects. Also presents some history of the creation of the First Amendment and its function.

First Freedom (The). (16 mm film, 21 min.) Oxford Films, Inc. (The Associated Press, 1974).

An overview of the American press, showing its diversity and its function as watchdog, and a discussion of the role of the press in relation to national security and classified documents. Presented from the point of view of newsmen, concluding that the importance of a free press overrides the desire for "stability" of governmental institutions.

Free Press and Speech. (sound filmstrip, student source books, duplicating masters, guide, 14 min.) Fundamental Freedoms series. Xerox Education Publications. (Xerox Education Publications, 1974).

Asks open-ended questions about the extent and limits of First Amendment privileges, and provides examples of situations in which the exercise of free expression might violate the rights of others.

Free Press v. Fair Trial by Jury: The Sheppard Case. (16 mm film, guide, 27 min.) Our Living Bill of Rights series. Encyclopaedia Britannica Educational Corporation. (Encyclopaedia Britannica Educational Corporation, 1969).

The balance between a defendant's right to a fair and impartial trial and the conflicting right to a free press is examined in a reconstruction of this famous trial and its surrounding circumstances.

Freedom of Speech. (16 mm film, 21 min.) The Bill of Rights in Action series. BFA Educational Media. (Educational Motion Pictures, Bernard Wilets, 1968).

A neo-Nazi speaks on the virtues of Hitler in front of a synagogue. Angry crowds gather and he is arrested and convicted for disturbing the peace. His case is taken to an appellate court on the grounds that his constitutional right to free speech was abridged. The role of precedent is explained as the lawyers prepare and argue their cases. The judgment is left to the audience.

Freedom of the Press. (16 mm film, 21 min.) The Bill of Rights in Action series. BFA Educational Media. (BFA Educational Media, Bernard Wilets, 1973).

When documents implicating a senator in corrupt activities are photographed and supplied to a newspaper, a grand jury subpoenas the reporter and questions the source of his information. Issues of the First and Fifth Amendments are explored when the reporter refuses to answer questions and the Grand Jury appeals to the Court to intervene. Resolution is left to the student.

Freedom of the Press — Today. (2 sound filmstrips, guide, 13-16 min. each) Guidance Associates. (Guidance Associates and The Associated Press, Doris Storm, 1969).

A general discussion of the scope and limits of a free press, including the history of the struggle to maintain a free press. Also presents criticism of the press from the young, the poor, racial minorities, radicals, conservatives, and other groups, and responses to their criticisms from representatives of the press.

Freedom to Speak: People of New York vs. Irving Feiner. (16 mm film, 23 min.) Our Living Bill of Rights series. Encyclopaedia Britannica Educational Corporation. (Encyclopaedia Britannica Educational Corporation).

The right to free speech is examined and balanced with society's right to maintain order through the study of a case involving a college student who appeals his conviction of disorderly conduct charges to the Supreme Court. Majority and dissenting opinions are presented. Can be supplemented with student resource readers, "Liberty Under Law/Freedom of Expression — The Feiner Case," also available from Encyclopaedia Britannica Educational Corporation.

Great Rights (The). (16 mm film, 14 min.) MacMillan Films, Inc. (Brandon Films, Thomas Brandon, 1963).

Animated cartoon showing what might happen if the Bill of Rights were no longer here: censorship of papers and movies, arrest for expression of opinion, closing of churches, disappearance of due process, unlawful searches, no protection against self-incrimination.

In Search of Justice. (8 sound filmstrips, with cassettes only, 30 student activity booklets, guide, 12 min. each) Charles E. Merrill Publishing Co. (Law in American Society Foundation, Shirley L. Baugher and Robert H. Ratcliffe, 1975).

This inquiry-oriented program uses case studies to explore the legal system and some basic concepts of law. "Law: A Need for Rules?" deals with police power and the balance between individual rights and the need to protect society. "Youth: Too Young for Justice?" shows the difference between adult and juvenile criminal procedures. "Free Expression: A Right to Disagree?" raises questions about the nature of "speech" and the scope and limits of the right to free speech. "Discrimination: Created Equal?" focuses on discrimination against blacks and women. "Consumer Law: Cash or Court?" examines the rights and responsibilities of buyers and sellers in a credit economy. In "The Accused: Too Many Rights?" the rights of the accused are examined in a hypothetical investigation of a man suspected of selling drugs. "Landlord/Tenant: Who Is Responsible?" examines the landlord/tenant relationship. "Welfare: A Right to Survive?" asks who should be eligible for aid and whether rights of welfare recipients differ from rights of those not receiving welfare. The student activity book involves a number of strategies including mock trials, value clarification exercises, case studies, and vocabulary exercises. Based on slide presentations developed by the Law in American Society Foundation.

Interrogation and Counsel. (16 mm film, guide, 22 min.) Bill of Rights series. Churchill Films. (Churchill Films, 1967).

Two sequences are presented with "stops" for discussion. In the first sequence a man who apparently is guilty of murder goes free when he uses the Fifth Amendment privilege against self-incrimination. An alternate situation is presented in which the man is innocent, but does not use his constitutional right to remain silent and as a result will probably be indicted for murder. The second sequence deals with the legal representation available to the man and raises questions concerning an indigent's right to counsel. The film is designed to correlate with *The Bill of Rights: Sourcebook* and *The Bill of Rights: Handbook* (Benziger, Inc.)

Justice and the Law. (6 sound filmstrips, guide, 12-15 min. each) Pathescope Educational Films, Inc. (Pathescope Educational Films, Inc., 1972).

Each filmstrip describes important cases which have affected our basic rights: "Equal Justice Under Law," "Equal Protection of the Law," "Freedom of Belief," "Freedom of Expression," "Freedom of Press," and "The Right to a Fair Trial."

Justice and the Poor. (16 mm film, 60 min.) Correctional Service of Minnesota. (NET, A.H. Perlmutter, 1967).

This documentary shows our double standard of justice by examining inequities in youth facilities for poor juveniles, the adverse relationship between the poor and the police, discriminatory practices in applying the death penalty and in using plea bargaining, and other problems. Also provides some suggestions for possible solutions.

Justice Delayed, Justice Denied. (16 mm film, 40 min.) Justice in America series. Correctional Service of Minnesota. (CBS, John Sharnik, 1971).

This documentary examines the problem of a backlogged court system which denies the right to a speedy trial, keeps those accused who cannot afford bail in jail for long periods of time, and allows some dangerous people back on the streets while awaiting trial. Also discusses the injustices of plea bargaining and presents some possible solutions to the problem of delayed justice.

Justice Under Law: The Gideon Case. (16 mm film, guide, 23 min.) Our Living Bill of Rights series. Encyclopaedia Britannica Educational Corporation. (Encyclopaedia Britannica Educational Corporation, John Barnes, 1967).

Presents this important case of an indigent defendant, convicted of a non-capital offense without benefit of counsel, who took a request for his right to legal representation to the United States Supreme Court. "Stops" are provided in the film for audience discussion before the Court decisions are read. The film concludes with an open-ended question concerning the present adequacy of rights protection for poor defendants. Can be supplemented with student resource readers, "Justice Under Law/Right to Counsel — The Gideon Case," also available from Encyclopaedia Britannica Educational Corporation.

Juvenile Thief. (sound filmstrip, student manuals, guide, 5 min.) Civil Liberties: Contemporary Case Studies series. Guidance Associates. (Guidance Associates, 1972).

This set probes the constitutional guarantees against unwarranted search and improperly obtained confessions. A police officer suspecting a juvenile of stealing a watch searches his school locker and finds the stolen merchandise. When arresting the boy, he neglects to inform him of his rights. The audience is asked to decide whether the watch and the boy's confession should be admitted as evidence.

Liberty: A Question of Speech. (sound slides, with cassette only, guide, 15 min.) Law-Focused Audio-Visual series. Law in American Society Foundation. (Law in American Society Foundation, Robert H. Ratcliffe and John W. Wick, 1972). (free loan, limited supply)

Centers on major freedom of expression cases, giving majority and dissenting opinions to stimulate discussion of the scope and limits of First Amendment rights. Includes "stops" to aid discussion.

Marijuana Possession. (sound filmstrip, student manuals, guide, 7 min.) Civil Liberties: Contemporary Case Studies series. Guidance Associates. (Guidance Associates, 1972).

The grounds for personal search by police are examined in a fictitious account of police, called to the scene of a teenage party, who search the young people and find marijuana on one boy. The audience is asked whether the marijuana should be admissible evidence against the boy even though there seemed to be no cause for the personal search.

Mr. Pounds. (16 mm film, guide, 11 min.) The Skyline series. McGraw-Hill Films. (McGraw-Hill Films in collaboration with Lumin Films, 1969).

Elmer is mistakenly accused of breaking a window in Mr. Pounds' grocery store. No one listens to him when he proclaims his innocence. After two days of working off the debt, he is exonerated. A useful film for discussions of due process, loyalty and other basic concepts of law.

Need to Protect. (16 mm film or Super 8 film, guide, 18 min.) Youth and the Law series. Center for Law and Education — Americans for Effective Law Enforcement. (Center for Law and Education — Americans for Effective Law Enforcement, 1973).

Two similar situations are presented in which a police officer uses his right to conduct a "reasonable search" of "suspicious" persons. The film contains "stops" to aid discussion of the need to protect society and the ways in which such protection may limit individual rights.

Police Power. (16 mm film, 59 min.) Indiana University Audio-Visual Center. (NET, 1964).

The Superintendent of the Chicago Police Department (in 1964), law professors, and a police scientist participate in a panel discussion concerning the struggle to find a balance among individual civil liberties, the protection of the state, and the appropriate extent of police power. Includes an interview with Danny Escobedo, whose landmark case concerning improperly obtained confessions was argued before the Supreme Court.

Pendulum. (16 mm film, 106 min.) MacMillan Audio Brandon. (Columbia Pictures Corporation — A Pendulum Production, Stanley Niss).

When the U.S. Supreme Court orders a new trial for a man convicted of murder, because of an improperly obtained confession, the arresting police officer is outraged. However, the officer finds out that balancing individual and societal rights is not simple when he, himself, is accused of murder. Suggested for mature audiences and should be previewed by the teacher before use in the classroom.

Pregnancy in High School. (sound filmstrip, student manuals, guide, 5 min.) Civil Liberties: Contemporary Case Studies series. Guidance Associates. (Guidance Associates, 1972).

Questions of due process are raised when a pregnant girl is suspended from her high school. The principal argues that her presence is disruptive and a bad influence on other students. The girl and her parents argue that she has a constitutional right to continue. The audience is asked whether Brenda should have the right to a full hearing.

Privilege Against Self-Incrimination (The). (16 mm film, 23 min.) The Bill of Rights in Action series. BFA Educational Media. (Educational Motion Pictures, Bernard Wilets, 1972).

This is a fictional account of a future society in which a murderer is arrested. It raises the question of a defendant's right against self-incrimination in the face of the State's "truth machine" which can painlessly and reliably probe the defendant's memory. A trial scene presents the arguments for and against self-incrimination. The story is left open-ended.

Right to Legal Counsel (The). (16 mm film, 14 min.) The Bill of Rights in Action series. BFA Educational Media. (Vignette Films, 1968).

An indigent's right to legal counsel is explored through discussion of Amendments VI and XIV and their interpretation in *Betts v. Brady* and the *Gideon* case.

Rights of the Accused. (video tape, 29 min.) Lex Singularis series. Academic Support Center. (KETC-TV, The Missouri Bar, 1973).

Opens with a skit about a 1950's rock star who sings of the rights of the accused. Concludes with a discussion between a law professor and high school students. Designed for use with the curriculum guide, "Law in a Free Society" (from the Missouri Bar, 326 Monroe Street, Jefferson City, Missouri 65101).

Some Are More Equal Than Others. (16 mm film, 40 min.) Justice in America series. Correctional Service of Minnesota. (CBS, John Sharnik, 1971).

This documentary shows the plight of the poor and the dissenters in America seeking justice. Provides a case study of Black Panthers who were kept in jail for months in New York City, and subsequently acquitted. Also shows how both the criminal court and the civil court systems may be providing more justice for the middle class than for the poor.

Story of a Trial. (16 mm film, 22 min.) The Bill of Rights in Action series. BFA Educational Media. (Film Associates, 1966).

This film follows a petty theft case involving two adult males and demonstrates their rights which are protected during arrest, arraignment and trial.

Supreme Court Cases: Series Three – Civil Liberties. (4 records, 8-16 min. each case) Educational Audio Visual, Inc. (Educational Audio Visual, Inc., S.P. Puner, 1967).

Presents the facts, issues and decisions in: *Dred Scott v. Sandford* (1857, rights of slaves); *Civil Rights Cases* (1883, congressional power to legislate against private racial discrimination); *Plessy v. Ferguson* (1896, separate-but-equal doctrine); *Lochner v. New York* (1905, right of state to regulate working conditions); *Abrams v. U.S.* (1919, constitutionality of Espionage Act); *Gitlow v. N.Y.* (1925, right to advocate overthrow of government by force); *Powell v. Alabama* (1932, due process and equal protection); *De Jonge v. Oregon* (1937, right to advocate criminal acts toward the end of effecting political change or revolution); *McCullum v. Board of Education* (1948, legitimacy of "released time" classes for religious instruction on public school property); *Brown v. Board of Education of Topeka* (1954, school desegregation); *Roth v. U.S.* (1957, right to send "obscene" matter through mails); *Mapp v. Ohio* (1961, necessity of search warrant); *Engle v. Vitale* (1962, constitutionality of prayer in public schools); *Gideon v. Wainwright* (1963, indigents' right to counsel); *Reynolds v. Sims* (1964, congressional reapportionment); *Miranda v. Arizona* (1966, procedural due process).

Trial (The). (16 mm film, 118 min.) MacMillan Audio Brandon. (Paris Europa-Productions, Alexander Salkind, 1962).

A feature length film which is a modern adaptation of the classic story by Franz Kafka. A man is placed under arrest, but cannot discover what he is charged with. Even his attorney has no interest in helping him. When the man refuses to give in to the injustices of the legal system he is killed. For advanced students.

Trial: The City and County of Denver versus Lauren R. Watson Series. (16 mm film, in 4 parts, 90 min.) Indiana University Audio-Visual Center. (NET, 1970).

The four days of an actual trial of a man charged with interference and resistance during his arrest. The man, a Black Panther Party member, contends that the arresting police officer was harassing him and he in fact is not guilty of the charges. The film includes comments by a professor of law, as well as informal interviews with the arresting officer, defendant, judge, attorneys, and jurors. Parts of the film may be shown to supplement discussions of due process, civil rights, police relations, and other issues.

Under Arrest! Operation: Street Encounter. (16 mm film, 15 min.) The Nelson Company. (NIE, 1972).

Based on an actual encounter in which police see a man who matches a murder's description. The innocent man pushes a police officer and is convicted of battery and resisting arrest. "Stops" are provided at several intervals during the film to allow for audience discussions of alternative actions available to the man and the criminal justice personnel.

Where Our Rights Come From. (video tape, 29 min.) Lex Singularis series. Academic Support Center. (KETC-TV, The Missouri Bar, 1973).

"Constitutional Nursery Rhymes" and an interpretive dance of the Constitution and Bill of Rights show how laws and legal traditions developed from ancient times to the present. Includes a discussion between a law professor and high school students. Designed for use with the curriculum guide. "The Role of Law in a Free Society" (available from The Missouri Bar, 326 Monroe Street, Jefferson City, Missouri 65101).

Youth and the Law Series. (6 sound filmstrips, guide, 16-19 min. each) Doubleday Multimedia. (Doubleday Multimedia, 1973).

Each filmstrip asks open-ended and factual questions. "Law and the Police" describes the roles of police officers and discusses both the limits and extent of their authority. "Law and the Judge" follows a day's activities of a judge and raises some of the issues he must face in making decisions. Also shows setting of bail, jury selection, plea bargaining, and other court procedures. "Law and the Youthful Offender" shows a juvenile case and the special conditions of the judicial process as it applies to juveniles. "Law and the Individual" shows how the law affects one person's life in multiple ways on one day. "Law and the Dissenter" presents the various alternatives for change open to a man who is concerned about pollution of a stream. "Law and the Accused" demonstrates the legal rights of a suspect from his arrest, through arraignment, bail setting, plea bargaining, jury selection, and trial.

DISTRIBUTORS

Academic Support Center
Scheduling Department
505 East Steward Road
University of Missouri-Columbia
Columbia, Missouri 65201

BFA Educational Media
2211 Michigan Avenue
Santa Monica, California 90404

Center for Law and Education
Suite 960
State National Bank Plaza
1603 Orrington Avenue
Evanston, Illinois 60201

Churchill Films
662 North Robertson Boulevard
Los Angeles, California 90069

Correctional Service of Minnesota
1427 Washington Ave., South
Minneapolis, Minnesota 55404

Disney (Walt) Educational Media
800 Sonora Avenue
Glendale, California 91201

Doubleday Multimedia
Box 11607
1371 Reynolds Avenue
Santa Ana, California 92705

Educational Audio Visual Inc.
Pleasantville, New York 10570

Encyclopedia Britannica Educational Corporation
425 North Michigan Avenue
Chicago, Illinois 60611

Guidance Associates
757 Third Avenue
New York, New York 10017

Indiana University
Audio-Visual Center
Bloomington, Indiana 47401

International Film Bureau, Inc.
332 South Michigan Avenue
Chicago, Illinois 60604

Law in American Society Foundation
33 North LaSalle Street
Chicago, Illinois 60602

MacMillan Audio Brandon
34 MacQuesten Parkway South
Mount Vernon, New York 10550

MacMillan Films Inc.
34 MacQuesten Parkway South
Mount Vernon, New York 10550

McGraw-Hill Films
1221 Avenue of the Americas
New York, New York 10020

Merrill (Charles E.) Publishing Co.
1300 Alum Creek Drive
Columbus, Ohio 43216

Nelson Co. (The)
5400 Shirley Avenue
Tarzana, California 91356

Oxford Films, Inc.
1136 N. Las Palmas Avenue
Los Angeles, California 90038

Pathescope Educational Films, Inc.
71 Weyman Avenue
New Rochelle, New York 10802

Schloat Productions Inc.
50 White Plains Road
Tarrytown, New York 10591

Time-Life Films Inc.
100 Eisenhower Drive
Paramus, New Jersey 07652

Xerox Educational Publications
Education Center
Columbus, Ohio 43216

Xerox Films
245 Long Hill Road
Middletown, Connecticut 06457

APPENDIX D

INSTITUTIONS, AGENCIES, AND ORGANIZATIONS

The following is a list of institutions and agencies that may prove helpful if you or your students wish to obtain information about specific issues and topics, speakers, latest court decisions, curriculum materials, etc.

Institute for Political/Legal Education
P.O. Box 426
Glassboro-Woodbury Road
Pitman, New Jersey 08071
Phone: 609/589-3410

The American Assembly
Columbia University
New York, New York 10027

American Association of University Professors
One Dupont Circle
Washington, D.C. 20036

American Bar Association
1155 East 60th Street
Chicago, Illinois 60637

American Civil Liberties Union
22 East 41st Street
New York, New York 10016

American Enterprise Institute
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

American Viewpoint, Inc.
University Square
Chapel Hill, N.C. 27514

Association of American Law Schools
Committee on Civic Education
Robert S. Summers, Professor of Law
Cornell Law School
Ithaca, New York 14850
Phone: 607/256-4975

The Center for the Study of Democratic Institutions
Box 4068
Santa Barbara, California 93103

Center for War/Peace Studies
Robert W. Gilmore, Executive Director
213 W. 18th Street
New York, New York 10003

Chamber of Commerce of the U.S.
1615 H Street, N.W.
Washington, D.C. 20006

Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425
Phone: 202/254-6758

Common Cause
2030 M Street, N.W.
Washington, D.C. 20036

Constitutional Rights Foundation
Vivian Monroe, Executive Director
609 South Grand Avenue
Suite 1012
Los Angeles, California 90017
Phone: 213/627-7048

Department of Information
National Council of Churches
475 Riverside Drive
New York, New York 10027

Education in the Law
Daniel F. Curtin, Chairman
Dutchess County Bar Association
Corbally and Gatland
25 Market Street
Poughkeepsie, New York 12601
Phone: 914/454-1110

Education of Youth Committee
Herbert C. Goldstein, Chairman
Pennsylvania Bar Association
Young Lawyers Section
133 State Street
Harrisburg, Pa. 17101
Phone: 717/236-5048

Group Research, Inc.
422 Bond Building
1404 New York Ave., N.W.
Washington, D.C. 20005

High School Law Course Committee
David I. Grunfeld, Esq.
Young Lawyers Section
Philadelphia Bar Association
818 Widener Building
Philadelphia, Pa. 19107
Phone: 215/564-3880

High School Law Program Speakers'
Bureau Committee
Robert DiGiulio, Chairman
Young Lawyers Section
Monroe County Bar Association
8 Reynolds Arcade Building
Rochester, New York 14614
Phone: 716/546-1817

High School Teaching Program
Cyril Fox, Professor of Law
1417 Cathedral of Learning
University of Pittsburgh Law School
Pittsburgh, Pa. 15260
Phone: 412/621-3500 ext. 341

Institute for American Democracy (IAD)
Suite 101
1330 Massachusetts Ave., N.W.
Washington, D.C. 20005

Institute for World Order-School Program
Betty Reardon, Director
11 West 42nd Street
New York, New York 10036
Phone: 212/947-2190

Justice in America
S. Donn Campbell
5709 Solway
Pittsburgh, Pa. 15214
Phone: 412/421-2640

Law Exploring
Richard L. Weidman, Director
Exploring Division
Boy Scouts of America
North Brunswick, New Jersey 08902
Phone: 201/249-6000

Lincoln Filene Center Law Education Program
Philip E. Cambell, Director
Tufts University
Medford, Massachusetts 02155
Phone: 617/628-5000 ext. 353

National Commission on Resources for Youth
Mary Conway Kohler, Director
36 West 44th Street
New York, New York 10036
Phone: 212/682-3339

National Council for the Social Studies
Merrill Hartshorn, Executive Secretary
1201 16th Street, N.W.
Washington, D.C. 20036
Phone: 202/833-4476

National Conference of Christians and Jews
43 West 57th Street
New York, New York 10019

New Jersey Student Union
Joel Ellinwood, Coordinator
97 Church Street
New Brunswick, New Jersey 08901
Phone: 201/247-6426

New York State Bar Association
Dan Goldstein, Director of Public Relations
1 Elk Street
Albany, New York 12207
Phone: 518/445-1211

Pennsylvania Bar Association

Frederick H. Bolton, Executive Director
401 North Front Street
P.O. Box 186
Harrisburg, Pa. 17108
Phone: 717/238-6715

People's Bicentennial Commission

1346 Connecticut Ave., N.W.
Washington, D.C. 20036

Philadelphia Bar Association Citizenship Committee

Rose K. Landy, Chairman
423 City Hall Annex
Philadelphia, Pa. 19107
Phone: 215/686-5687

Public Relations Department

American Jewish Committee
165 East 56th Street
New York, New York 10022

Public Relations Department

Anti-Defamation League
315 Lexington Avenue
New York, New York 10016

Public Relations Department

National Congress of Parents and Teachers
700 N. Rush Street
Chicago, Illinois 60611

Republican National Committee

Dwight D. Eisenhower Republican Center
310 First Street, S.E.
Washington, D.C. 20003

The Ripon Society

1609 Connecticut Ave., N.W.
Washington, D.C. 20009

The Robert A. Taft Institute of Government

Marilyn Chelstron, Executive Director
420 Lexington Avenue
New York, New York 10017
Phone: 212/684-0877

Speakers' Bureau

W.T. MacPherson, Director
1117 Stanford, N.E.
Albuquerque, N.M. 87106
Phone: 505/277-3604

Statewide Law-Related Education

Robert L. Schell, Project Director
Pennsylvania Department of Education
Box 911
Harrisburg, Pa. 17126
Phone: 717/787-6743

Student Court

Phyllis Lerman, Director
Hawthorne Avenue School
444 Hawthorne Avenue
Newark, New Jersey 07112
Phone: 201/733-6890

Task Force on Constitutional Rights

Evelyn Sosower, Chairman
National Council of Jewish Women
One West 47th Street
New York, New York 10036
Phone: 212/346-7135

United Nations Association of the U.S.

833 U.N. Plaza
New York, New York 10017

U.S. Department of Health, Education & Welfare

330 Independence Ave., S.W.
Washington, D.C. 20201
Phone: 202/245-6296

U.S. Department of Justice

Constitution Ave. & 10th Street, N.W.
Washington, D.C. 20530
Phone: 202/737-8200

Youth and the Law

Elinor Seizigny & Regis Ryan, Co-Directors
The Community Legal Rights Foundation, Inc.
38 Capitol Street
Albany, New York 12207
Phone: 518/434-1153

APPENDIX E

SELECTIONS FROM THE UNITED STATES CONSTITUTION

ARTICLE I

SECTION 9. ...The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it....

No Bill of Attainder or ex post facto Law shall be passed.

ARTICLE III

SECTION 1. The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office....

SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; between a State and Citizens of another State; — between Citizens of different States; — between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects....

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress....

AMENDMENTS

(The first 10 Amendments were ratified December 15, 1791, and form what is known as the "Bill of Rights.")

AMENDMENT 1

Congress shall make no law respecting an establishment or religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

AMENDMENT 4

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 6

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

AMENDMENT 8

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT 9

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT 10

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT 13

(Ratified December 6, 1865)

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT 14

(Ratified July 9, 1868)

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

AMENDMENT 19

(Ratified August 18, 1920)

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT 26

(Ratified July 1, 1971)

SECTION 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT 27

(Proposed Equal Rights Amendment, passed by Congress, ratification by 38 states pending.)

Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

APPENDIX F

THE JUDICIAL SYSTEM



ORIGINS OF THE JUDICIAL SYSTEM

Article III of the Constitution — "The Judicial Power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish."

Characteristic of the Constitution, this article is vague in order to allow for flexibility and a system which can be responsive to society's changing demands. It mandates only the establishment of a Supreme Court which shall have original jurisdiction (the power to hear the case for the first time, without any ruling from a lower court) "in all cases affecting ambassadors, other public ministers and consuls". The Court's appellate jurisdiction (its power to hear cases on appeal, those already ruled upon by a lower court) is granted by Article III "with such exceptions and under such regulations as the Congress shall make."

The Judiciary Act of 1789 — This act is the second legislative source of the judicial system as it presently exists. It established the rest of the three-level federal court system: the circuit courts of appeals and the federal district courts.

State Court Systems — Each state determines for itself its own court system.

FEDERAL COURTS

The Supreme Court — The Supreme Court is the only court established by the Constitution. It has eight Justices and one Chief Justice who are each appointed for life by the President with the advice and consent of the Senate. Justices can be removed from the bench only by retirement, death, or impeachment. As of 1972, Justices received \$60,000 *per annum* compensation, with the Chief Justice drawing \$62,500.

The Justices, seated at a long table in order of their seniority with the Chief Justice at the center, hear cases in the marbled and velveted halls of the Supreme Court building in Washington. A session lasts from October to June, and the Justices work year round reading and researching to prepare themselves for the following term. The Court hears cases over which it has original jurisdiction (see above); and which reach the Court on a writ of certiorari. *Certiorari* means "to be made certain with regard to". The writ is one which asks the Court to decide, once and for all, the resolution of the lawsuit at hand. Because of the magnitude of the Court's workload, the Judiciary Act of 1925 empowered the Court to decide which cases warrant its consideration. Thus the Supreme Court now is, in fact, able to reject any case but one over which it has original jurisdiction.

Three types of opinion issue from the Supreme Court. The *majority* opinion is the one which states the decision and gives the Court's legal reasoning. A Justice who agrees with the result reached by the majority, but who follows a different line of reasoning, will write a *concurring* opinion, and one who disagrees with the majority will compose a *dissenting* opinion. A fourth possibility is that a Justice who, on account of a conflict of interest or for other reasons, feels unable to participate in the disposition of a case, will disqualify himself and abstain from offering an opinion at all.

Five of the nine Justices constitute a majority. The Chief Justice assigns the writing of the opinion. Normally, the senior Justice holding the majority opinion or the Justice who feels most strongly in favor of it is asked to write the opinion by the Chief Justice. The Chief Justice assigns the writing of the dissenting opinion on the same basis.

Rules of Statutory Interpretation

The Supreme Court receives about 5,000 requests to hear cases each year. They choose about 750 on which they will hear arguments and hand down decisions. The Rules of Statutory Interpretation aid them in judging which cases merit their attention.

1. The Court will not render an advisory opinion: it will not judge the merits of an action which has yet to be accomplished. A Congressional committee could not, for example, approach the Court and request a ruling on the constitutionality of a law which had not yet been passed.
2. The Court will not formulate a rule broader than the facts of the case under consideration require. If it is to rule on the constitutionality of shorter-length hair in school, it will not be beyond that and touch on the right to dress in blue jeans for school.
3. The Court must, by its decision, be ruling on or correcting a situation presently existing. If the circumstances which prompted the litigation in the first place have already been corrected, then the case is moot and the Court will not consider it. If, for example, a student claims he was the victim of an unconstitutional suspension from school, but has already graduated by the time his case comes before the Supreme Court, the case will be dismissed as moot.
4. Normally, the Supreme Court will not hear a case which is the subject of political controversy, in the "political thicket", as the Court says, at the time of appeal. The Court assiduously avoided ruling on the matter of the admissibility of the Watergate tapes as evidence at trial; they consented to do so only when it became clear that public outcry demanded a decision.
5. The Supreme Court is one of "last resort": it will hear cases only after the litigants have exhausted all remedies at the local and lower appellate levels.
6. One of the parties must argue that some damage or injury has been done *him*. The Court does not deal in pure theory: the issues to be settled must have some basis in fact. If, for instance, Congress were to legislate that no blue-eyed blond could become a federal legislator, a blue-eyed blond who wished to run for Congress would have to challenge the constitutionality of that law in the court because he/she is enduring an injustice. A dark-eyed person with brown hair, who *is* eligible for election to Congress, is not injured by the law and therefore cannot challenge it.

¹For an interesting and entertaining discussion of decision-making in the Supreme Court see the article "Behind the Marble, Beneath the Robes" cited in the bibliography.

Judicial Review

Congress, by virtue of Article III of the Constitution, has power over the appellate jurisdiction of the Supreme Court. The Court, however, has a complementary balance to exercise over Congress, the power of judicial review. This principle was enunciated for the first time in the famous case of *Marbury v. Madison*. William Marbury had been appointed a Justice of the Peace for the District of Columbia under President Adams by the Secretary of State, but his signed commission had not yet been delivered. Marbury petitioned the Supreme Court to order the New Secretary of State, James Madison, serving under President Jefferson, to deliver the commission. Congress had previously passed a law granting the Court the power to issue *writs of mandamus*, (orders directing a person to perform a duty falling within the scope of his official responsibilities). Chief Justice John Marshall ruled that it would be unconstitutional for the Court to issue this type of writ because such writs were not part of the Court's original jurisdiction as specified by the Constitution. If Congress wished to add writs of mandamus to the original jurisdiction of the Court, therefore, let it do so by Constitutional amendment. This was the first time the Court declared a law of Congress null and void for being unconstitutional, and it established the principle of judicial review.

The Meaning of a Supreme Court Decision

The Supreme Court is the court of last resort in the United States, and its interpretations of the Constitution and of federal law are final in the absence of new Congressional legislation or constitutional amendments.

Lower Federal Courts

1. Courts of Appeals

There are eleven Circuit Courts of Appeal. A circuit is the geographical area in which the court of appeal has jurisdiction. There are ten such geographical regions in the United States; the District of Columbia is the eleventh circuit. These courts hear appeals from inferior courts and review decisions of federal regulatory agencies.

2. Federal District Courts

There are eighty-eight Federal District Courts. These are trial courts, the first level in the three-level federal court system — district court, court of appeals, Supreme Court — and have original jurisdiction over disputes between citizens of different states and cases involving questions of federal law.

3. Specialty Courts

The U.S. Court of Claims, the U.S. Court of Custom and Patent Appeals, and the U.S. Court of Military Appeals are, as their names indicate, courts which have jurisdiction only over very specialized areas of dispute.

APPENDIX G

NEW JERSEY STATE COURTS

NOTE: Since every state legislatively determines its own judicial system, it is impossible to give an accurate, general outline applicable to all states. The following is the state court hierarchy of New Jersey.

1. *New Jersey State Supreme Court*

The State Supreme Court is the highest court in New Jersey. The court comprises a chief justice and six associate justices and hears the following types of cases:

appeals from the appellate division of the superior court in cases involving:

- a. federal or state constitutional questions;
- b. a decision of the appellate division of the supreme court which was not unanimous;
- c. a case where the death penalty was imposed;
- d. a question of extreme public import.

2. *New Jersey Superior Court*

There are three divisions in the New Jersey Superior Court:

- a. appellate
- b. law
- c. chancery

The appellate division is the step immediately below the State Supreme Court on the judicial hierarchy. The law and chancery divisions are both trial divisions, having nearly the same jurisdiction as the county court. The law division tries cases involving violations of statutes. The chancery division tries equity cases. *Equity* is the type of justice which affords a relief or remedy not covered by statute. For example, a person who entered into a contract based on fraudulent representation would not be held to the contract by a court of equity.

3. *County Court*

There is one court in each county in New Jersey.

4. *County District Court*

Tenancy lawsuits and minor civil suits (where the amount involved is under \$3,000) are tried in county district court. These courts also have concurrent jurisdiction with municipal courts in criminal matters, and they try most of the traffic offenses which occur on state highways. County District Courts are also authorized to have a Division of Small Claims for handling disputes which involve matters that do not exceed \$200.

5. *Juvenile and Domestic Relations Court*

There is one Juvenile and Domestic Relations Court in every county, which tries support and child abuse cases. (In the smaller counties where special Juvenile Judges have not been appointed, the courts are presided over by judges of the County Courts.) These courts are also responsible for trying juvenile offenders, that is, persons under the age of 18. Sixteen- and seventeen-year-olds may be tried as juveniles or as adults, at the discretion of the judge, depending on the type and frequency of their offense.

6. *Surrogate Court*

Surrogate courts are not real courts in the sense that they have no adversary proceedings: their functions are to process probates of wills and, in general, matters which are uncontested.

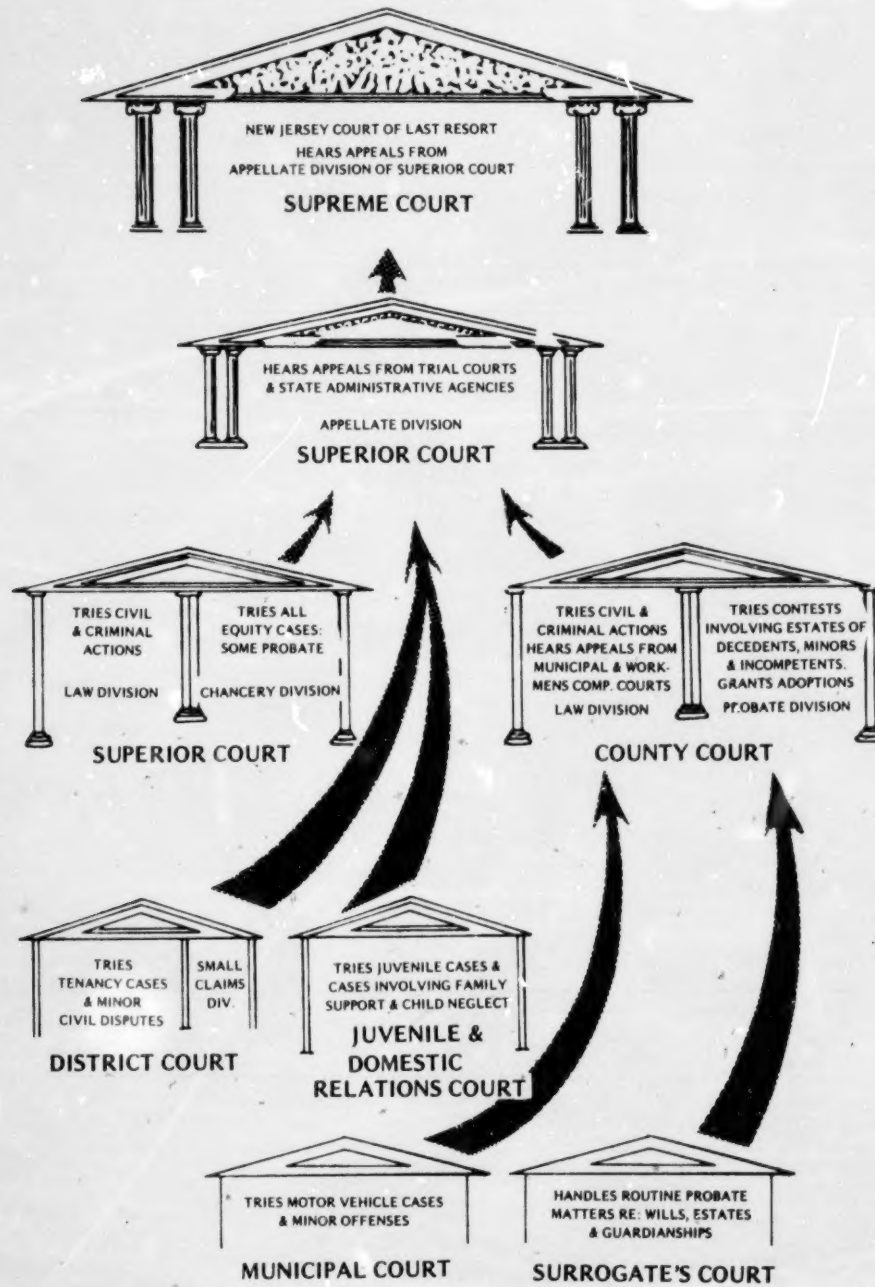
7. *Municipal Court*

Municipal courts, which handle more cases than all other courts combined, have two major functions:

- a. To conduct preliminary hearings in cases involving major offenses;
- b. To conduct trials without hearings where the offense is non-indictable (where the offense carries a sentence of less than six months.)

APPENDIX H

NEW JERSEY COURT SYSTEM¹



¹From *New Jersey: Spotlight on Government* published by the League of Women Voters of New Jersey, 1974.

APPENDIX I

LEGAL GLOSSARY¹

accomplice. One who knowingly, voluntarily, and with a common interest with others participates in the commission of a crime as a principal, accessory, or aider and abettor.

So far as his criminal liability is concerned, the question is whether he participated as a principal or as an accessory, aider or abettor; the term "accomplice" has no legal significance in deciding the question of his own guilt. Such term becomes significant if he is called as a witness and testifies upon the trial of another person and it is argued that, since he is an accomplice, his testimony is insufficient to support a conviction.

acquittal. A verdict of not guilty of a crime as charged; a setting free from the charge of an offense.

adjudication. Giving or pronouncing a judgment or decree; also the judgment given.

adversary system. The system of trial practice in the U.S. and some other countries in which each of the opposing, or adversary, parties has full opportunity to present and establish its opposing contentions before the court.

allegation. The assertion, declaration, or statement of a party to an action, made in a pleading, setting out what he expects to prove.

amicus curiae. A "friend of the court," one who volunteers information to a court on a case in which he has no right to appear as a party but in which he has been allowed to introduce arguments, often to protect his own interests.

apparent jeopardy. The status of the defendant in a criminal case on trial before a competent court and a jury impaneled and sworn.

appeal. The review by a higher court of a trial held in a lower court on the complaint that an error has been committed.

appellate court. A court having the power to hear appeals, review the decisions of lower courts, and reverse lower court decisions when they are in error.

appellant. The party appealing a decision or judgment to a higher court.

arraignment. The act of bringing an accused before a court to answer the charge made against him by indictment, information, or complaint. It consists of bringing the accused into court, reading the charge to him then and there, and then calling upon him to plead "guilty" or "not guilty."

¹Compiled in part from James A. Ballentine, *Ballentine's Law Dictionary*, (Rochester, New York: The Lawyers Co-Operative Publishing Company, 1969), *Black's Law Dictionary*, (St. Paul, Minnesota: West Publishing Company, 1968) and the "Glossary of Legal Terminology," in *Law and the Courts*, the American Bar Association (Chicago, Illinois: ABA Press, 1974).

arrest. The seizing, detaining, or taking into custody of a person by an officer of the law.

attorney at law. Persons who are by license constituted officers of courts of justice, and who are empowered to appear and prosecute and defend. Of course, the responsibility of an attorney is not confined to appearances in court for prosecutions and defenses. A person acting professionally in legal formalities, negotiations, or proceedings, by the warranty or authority of his clients is an attorney at law within the usual meaning of the term. The distinction between attorneys or solicitors and counsel or barristers is practically abolished in nearly all the states.

attorney's privilege or immunity. The immunity or privilege of an attorney at law against being subjected to arrest or the service of process in a civil action while going to the place of trial of an action in which he appears in his professional capacity, during the trial, and while returning to his office or residence.

bail. The cash or bond security given for a defendant's future appearance in court, thereby releasing the defendant from custody until his hearing or trial.

beyond reasonable doubt. In a jury's consideration of a verdict, *not* beyond all possible or imaginary doubt, but a situation which satisfied the mind and conscience of a juror so that no other reasonable conclusion is possible.

booking. A police-station term for the entry of an arrest and the charge for which the arrest was made.

breach of the peace. An unlawful violation of the public peace and order by disorderly conduct.

bribery. The crime of offering, giving, or accepting anything of value to influence the behavior of a public official in the performance of his public duty.

brief. A written argument prepared by a lawyer to serve as the basis of his argument before a court.

burden of proof. The responsibility for producing enough evidence to prove the facts in a lawsuit.

burglary. The breaking and unlawful entering of a dwelling (or other structure) belonging to another with the intent to commit a felony; also includes attempted forcible entry.

capital crime. A criminal offense for which the maximum penalty is death.

certiorari. A writ, or order, from an appellate court to a lower court requesting for review a record of the proceedings of a trial.

change of venue. A change in the place where a trial will be held.

circumstantial evidence. All evidence of indirect nature; the process of decision by which court or jury may reason from circumstances known or proved to establish by inference the principal fact.

civil law. One of two broad fields of law, involving legal disputes between private individuals.

common law. The body of legal principles based on precedents set by court decisions rather than on statutes passed by legislatures. Also called "case law."

concurring opinion. An opinion filed by an appeals judge or a justice of the Supreme Court, agreeing with other opinions in the case but giving differing reasons for concurring.

confession. A voluntary admission, declaration or acknowledgment by one who has committed a felony or a misdemeanor that he committed the crime or offense or participated in its commission; a voluntary admission or declaration of one's agency or participation in a crime.

A confession is voluntary when made of the free will and accord of the accused, without fear or threat of harm and without hope or promise of benefit, reward, or immunity.

conviction. A verdict of guilty in a criminal case.

criminal homicide. The unlawful taking by one human being of the life of another in such a manner that he dies within a year and a day from the time of the giving of the mortal wound. If committed with malice, express or implied by law, it is murder; if without malice, it is manslaughter.

criminal law. One of two broad fields of law, involving legal action taken by the state against a person accused of committing a crime or offense against society.

cross-examination. In a legal proceeding, the close questioning of one party's witness, by an attorney for the opposite side, to test the truth of the testimony he has given.

de facto. In fact; in deed; actually so, but not sanctioned by law.

defame. To attack the reputation or good name of another person through the use of libel or slander.

default. A "default" in an action of law occurs when a defendant omits to plead within the time allowed or fails to appear at the trial.

defendant. The accused in a criminal case or, in a civil suit, the party sued by the plaintiff.

defense counsel. Attorney representing the defendant in a criminal or civil case.

de jure. According to law; by right; by lawful title.

demonstration. In expressing dissent, a public display of group feelings toward a person or institution.

deposition. The testimony of a witness not taken in open court but in pursuance of authority given by statute or rule of court to take testimony elsewhere.

dismissal. An order for a termination of a case without a trial, freeing the defendant without a verdict.

dissent. Political nonconformity or disagreement. In this instance, we will be referring to a mode of communication which expresses this dissent.

dissenting opinion. A court opinion delivered by one or more judges or justices, disagreeing with both the ruling and the reasoning of the majority opinion.

double jeopardy. Twice subjecting an accused person to the danger inherent in a trial for a criminal offense. (Citizens are protected under the Fifth Amendment against being tried twice for the same crime.)

due process of law. All the proper steps required for a fair hearing in a legal proceeding, guaranteed in the United States by the "Bill of Rights" and the Fourteenth Amendment to the Constitution.

equal protection of the laws. The constitutional requirement, guaranteed by the Fourteenth Amendment, that all persons in like circumstances are entitled to equal treatment by the law and, especially, in legal proceedings.

evidence. Any of the various types of information — including testimony, documents, and physical objects — that a court allows a lawyer to introduce in a legal proceeding in order to attempt to convince the court or jury of the truth of his client's contentions.

exoneration. Absolving of a charge or imputation of guilt; the lifting of a burden; a discharge, a release from liability; the application of the personal property of an intestate to the payment of his debts and the relief of his real property therefrom.

ex parte. In law, a term used to describe a legal proceeding undertaken for or on behalf of one side only.

extenuating circumstances. Circumstances which made a crime less aggravated, heinous, or reprehensible than it would otherwise be.

felony. A generic term for any of several high crimes such as murder, rape, robbery, for the purpose of distinguishing them from less serious crimes (called misdemeanors); offenses punishable by death or imprisonment in a state prison or penitentiary.

grand jury. A jury of inquiry called to hear the government make charges and present evidence in criminal cases to determine if a trial should be held. When the evidence warrants, the grand jury makes an indictment.

habeas corpus. A writ, or court order, requiring that a prisoner be brought before a judge to determine whether he is being held legally.

hung jury. A jury so divided in opinion that they cannot agree upon a verdict.

immunity. The protection given a witness against criminal prosecution in return for information.

impartial. Favoring neither, unbiased, fair, treating all alike.

indictment. A formal, written accusation of a crime drawn up by a grand jury after hearing the facts of a case.

information. A formal charge of the crime made by a law officer, usually the prosecuting attorney. He presents enough evidence against the accused to show that a trial should take place.

injunction. A writ, or court order, forbidding the defendant to do a threatened harmful act or directing him to stop such an act already in progress.

inquest. A judicial inquiry, usually held before a jury, to determine an issue of fact. One type of inquest is a coroner's inquest, an inquiry into the causes and circumstances of any death that occurs violently, suddenly, or suspiciously.

in re. "In the matter of" or "concerning," a term used to entitle a legal case or proceeding in which two parties do not oppose each other, or in which one person begins an action on his own behalf.

instructions to the jury. The advice or direction that the judge gives the jury on the law applicable to the case under consideration.

interlocutory ruling. A judgment or decree pronounced during the progress of a legal action and having only temporary or provisional force.

judicial review. The power or authority of the U.S. Supreme Court to interpret the Constitution, by reviewing and ruling on the constitutionality of orders issued by the President and of legislation passed by Congress and the states.

jurisdiction. The right to exercise authority in a given matter, such as the right of a court to hear and give judgment on a kind of legal action.

justices. Judges, judicial officials. The U.S. Supreme Court is composed of nine justices — the Chief Justice and eight Associate Justices.

justiciable. Proper for examination in and subject to the action of a court of justice.

larceny. The felonious stealing, theft, leading or riding away of personal property from the possession of another.

libel. Any written or printed words or pictures that are base or derogatory in nature and result in or are intended to be injurious to the reputation of another person.

libelous per se. Written or printed words of such kind that when applied to a person they will necessarily cause injury to him in his personal, social, official, or business relations of life, so that legal injury may be presumed or implied from the bare fact of publication. Written or printed words so obviously hurtful to the person aggrieved by them that no explanation of their meaning and no proof of their injurious character is required in order to make them actionable.

mandamus. A writ issued by a court ordering an official to carry out a specified official duty.

martial law. Overriding rule by state or military forces imposed upon a civilian population in time of war or critical public emergency when normal civil authority has failed to function.

misdemeanor. An offense, less serious than a felony, for which the punishment may be a fine or imprisonment in a local rather than a state institution.

mistrial. An erroneous or invalid trial; a trial which cannot stand in law because of lack of jurisdiction, wrong drawing of jurors, or disregard of some other fundamental requirement of due process.

mitigating circumstance. One which does not constitute a justification or excuse for an offense, but which may be considered as reducing the degree of guilt.

moot. Unsettled; undecided. A moot point is one not settled by judicial decisions.

nonjusticiable. Not proper for examination in nor subject to the action of a court of justice.

obscenity. That which is offensive to accepted standards of decency.

original jurisdiction. In law, the authority of a court to be the first to hear and decide certain kinds of cases.

overrule. To set aside; to reject. A judicial decision may be overruled by a later judgment on the same legal question — either by the same court or by a superior court. The later decision, not the earlier one, is then followed as a precedent.

panel. A list of jurors to serve in a particular court, or for the trial of a particular action.

parole. The release of a prisoner or detainee before his term has expired on condition of continued good behavior (post-incarceration).

peremptory challenge. The challenge which the prosecution or defense may use to reject a certain number of prospective jurors without giving any cause.

perjury. The willful giving of false testimony while under oath in a judicial proceeding.

petit jury (trial jury). A group of citizens, usually twelve in number, selected by law and sworn to investigate certain questions of fact and to return a truthful verdict based on the evidence presented.

plaintiff. The party who initiates an action, or lawsuit, against another, who then becomes the defendant.

plea. An accused person's answer to a charge or indictment in a criminal case; a defendant's answer to a plaintiff's charge in a civil case.

picket. To walk or stand in front of an organization in order to demonstrate or protest against it.

police powers. The general power, or authority, of state governments to protect the health, safety, morals, and welfare of their people. This power is based on the powers reserved to the states under the Tenth Amendment.

precedent. A judicial decision that may be used as a guide in deciding similar cases in the future.

prima facie. Legally valid and sufficient to establish a case unless disproved.

probable cause. Reasonable ground to believe that a crime has been or will be committed, justifying the government's action in searching or arresting a suspect.

probable cause for a prosecution. A reasonable ground for suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious, or as some courts put it, a prudent man, in believing that the party charged is guilty of the offense with which he is charged.

probable cause for arrest. A reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing the accused to be guilty. In substance, a reasonable ground for belief in guilt.

probable cause for issuance of a search warrant. A reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a prudent and cautious man in the belief that the person accused is guilty of the offense with which he is charged.

probation. A suspended sentence for a minor crime in which the person convicted can go free -- provided his behavior remains good. Normally, he is placed under the supervision of a probation officer (pre-incarceration).

prosecuting attorney. The lawyer who conducts the government's case against a person accused of a crime. He is often called the district attorney or the state's attorney.

prosecution. In criminal law, a proceeding carried on by due course of law in a court for the purpose of determining the guilt or innocence of a person charged with a crime.

public defender. An attorney-at-law appointed to aid a person accused of crime or taken into custody as delinquent who cannot afford a lawyer, acting as counsel to the same degree as if he/she had been retained by the accused person in the case.

public disturbance. An act causing annoyance, agitation, interruption or interference of a person or an assembled group.

quash. To put an end to, set aside, or make void, especially by judicial action (such as to quash a subpoena or an indictment).

reasonable doubt. An accused person is entitled to acquittal if, in the minds of the jury, his guilt has not been proved beyond a "reasonable doubt"; that state of the minds of jurors in which they cannot say they feel an abiding conviction as to the truth of the charge.

recidivism. The relapse into crime and return to prison of one who has been previously convicted and punished for a crime.

robbery. The felonious taking of money or goods of value from the person of another or in his presence, against his will, by force or by putting him in fear.

search and seizure. Means for the detection and punishment of crime; the search for and taking custody of property unlawfully obtained or unlawfully held, such as stolen goods, property forfeited for violation of the law, and property the use or possession of which is prohibited by law, and the discovery and taking into legal custody of books, papers, and other things constituting or containing evidence of crime.

search and seizure, unreasonable. In general, an examination without authority of law of a person or his premises with the intent to discovering stolen contraband or illicit property or some evidence of guilt to be used in prosecuting a crime.

search warrant. A form of criminal process which may be used only in furtherance of a public prosecution. An order in writing, in the name of the people, the state, or the commonwealth, according to the local practice, signed by a magistrate, and directed to a peace officer, commanding him to search for personal property and bring it before a magistrate. An examination or inspection, by authority of law, of a person or his premises, with the intent to the discovery of stolen, contraband, or illicit property, or some evidence of guilt to be used in the prosecution of a criminal action for some crime or offense with which he is charged.

sedition speech. Language which expresses criticism of, or rebellion against, the government or other authority.

self-incrimination. Testimony or other evidence given by a person, which tends to expose him to prosecution for a crime.

sentence. In criminal proceedings, the formal judgment in which a judge states the penalty or punishment for a defendant who has been convicted of a crime.

sequester. In reference to a jury, to isolate the jury with the purpose of preventing any external influence, such as that of press or television reports.

slander. Base and defamatory spoken words tending to harm another's reputation, business or means of livelihood. Both "libel" and "slander" are methods of defamation — the former being expressed by print, writings, pictures or signs; the latter orally.

stare decisis. The doctrine under which courts decide cases on the basis of precedents — rules established in previous similar cases.

subpoena. A writ commanding a person designated in it to appear in court for testifying as a witness, or to produce in court certain designated documents or other evidence.

subversion. An extreme form of dissent. Literally, subversion means to overthrow from within. For our purposes, subversion is a more radical type of dissent that encourages the overthrow of the government.

symbolic expression. Ideas, viewpoints, etc., expressed in *conduct* as opposed to speech (e.g., burning of draft cards, wearing of armbands, and so on).

time, place, and manner. The use of varied types of protest (e.g., picketing, marching, sit-ins, burning effigies) has made it necessary to place restrictions on the location of such protests, demeanor of the participants, etc. This the right to assemble (another form of expression) is subject to time, place, and manner regulations.

trial by jury. A trial in which the jurors are the judges of the facts and the court is the judge of the law.

veniremen. Panel from which a jury is drawn; list of prospective jurors.

venue. The place or county in which alleged events leading to legal action take place. It can also refer to the place from which the jury is drawn and in which the trial is held.

verdict. The formal decision of a jury regarding the facts of a legal case submitted to it at a trial.

waiver. The voluntary surrender of one's legal rights.

warrant. An order issued by a judge or other authority, directing a law officer to carry out an action, such as an arrest or a search.

writ. A written order from a court, commanding or prohibiting a specified act.